

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF DAVID WILSON

24 Volume I, Pages 1 - 254

25

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P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1           (The following is the deposition of DAVID  
2 WILSON, taken pursuant to Notice of Taking Deposition  
3 by Rule 30.02(f), by videotape, at the offices of  
4 Simpson Thacher & Bartlett, Attorneys at Law,  
5 425 Lexington Avenue, New York, New York, on  
6 August 14, 1997, commencing at approximately 8:32  
7 o'clock a.m.)

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12 APPEARANCES:

13       On Behalf of the Plaintiffs:

14           Martha K. Wivell

15           Robins, Kaplan, Miller & Ciresi

16           2800 LaSalle Plaza

17           800 LaSalle Avenue

18           Minneapolis, Minnesota 55402-2015

19

20       On Behalf of Lorillard Tobacco Company:

21           David S. Miller

22           Doherty, Rumble & Butler

23           2800 Minnesota World Trade Center

24           30 East Seventh Street

25           St. Paul, Minnesota 55101-4999

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1           On Behalf of Philip Morris Incorporated:

2           Daniel J. Ballintine

3           Dorsey & Whitney LLP

4           Pillsbury Center South

5           220 South Sixth Street

6           Minneapolis, Minnesota 55402-1498

7

8           On Behalf of B.A.T. Industries P.L.C.:

9           Mary Elizabeth McGarry, Jacob S. Pultman

10          and Kevin D. Lewis

11          Simpson Thacher & Bartlett

12          425 Lexington Avenue

13          New York, New York 10017-3954

14

15   ALSO PRESENT:

16          Martyn Gilbey

17          British-American Tobacco Company Limited

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## 1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Wilson 621	Statement on B.A.T	
4		Industries' Tobacco Interests	
5		in Developing Countries,	
6		Bates 105363439-42	63
7	622	The Future of US/UK Business	
8		Relations, September 17th,	
9		1980 speech, Bates	
10		100506546-51	87
11	623	Statement of Business	
12		Conduct, Bates 503074962-85	134
13	624	14th April 1982 letter,	
14		Walker to Hughes, Bates	
15		680585231-240, 242-254,	
16		256-258, 260-269, 271-276,	
17		279-330	159
18	625	21st September 1987 letter,	
19		Sheehy to Bruell, Bates	
20		501569168-9	168
21	626	Tobacco Strategy Group,	
22		Terms of Reference and	
23		Objectives, Bates	
24		482100459-62	199
25			

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1           627    May 13, 1994 memorandum,  
2                    Schoenbachler to Kohnhorst,  
3                    et al., Bates 482100455-62       209  
4           628    Tobacco Strategy Review,  
5                    Funding of R&D, Bates  
6                    109844405-8                       228  
7           629    Compendium of Epidemiological  
8                    Studies, 27 December 1984  
9                    Meeting Notes, Bates  
10                  107319251-2                       240  
11  
12  
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1 P R O C E E D I N G S

2 (Witness sworn.)

3 DAVID WILSON

4 called as a witness, being first duly

5 sworn, was examined and testified

6 as follows:

7 ADVERSE EXAMINATION

8 BY MS. WIVELL:

9 Q. Sir, could you introduce yourself to the ladies  
10 and gentlemen of the jury.

11 (Discussion off the stenographic record.)

12 Q. Would you please tell the ladies and gentlemen  
13 of the jury your name.

14 A. My name is David Wilson.

15 Q. All right. By whom are you employed?

16 A. B.A.T. Industries P.L.C.

17 Q. All right. And what is your position there?

18 A. I'm the company secretary of B.A.T. Industries  
19 P.L.C.

20 Q. What does the company secretary do?

21 A. The company secretary is the -- principally the  
22 chief administrative officer of the company, and his  
23 responsibilities include managing, organizing board  
24 meetings in consultation with the chairman and the  
25 chief executive, managing the business of the Chief

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1 Executive's Committee, acting as secretary to the  
2 various committees of the board, generally giving  
3 advice to the board on corporate law matters and  
4 matters related to the governance of the company and  
5 ensuring that the company complies with its statutory  
6 and other legal obligations.

7 Q. You said, among that list of duties, that you  
8 generally give advice to the board on corporate law  
9 matters. Are you a lawyer, sir?

10 A. I am a qualified solicitor, solicitor of the  
11 Supreme Court of England and Wales.

12 Q. What does it --

13 What kind of training do -- did you get in order  
14 to have that qualification?

15 A. I hold two degrees in law. I have a  
16 professional qualification awarded by the Law Society  
17 of England and Wales. I had two years of  
18 professional training with a law firm in London, and  
19 I was admitted a solicitor in October 1986. I'm also  
20 a chartered secretary and a fellow of the Institute  
21 of Chartered Secretaries and Administrators.

22 Q. All right. What is a chartered secretary?

23 A. A chartered secretary is a professional  
24 qualification awarded by the institute that I  
25 mentioned, and it is essentially a professional

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1 qualification for people in administrative positions;  
2 those occupying the position of corporate secretary  
3 would be a good example.

4 Q. All right. You mentioned that you had been --  
5 or spent some time with a law firm, I think. Is that  
6 right?

7 A. Yes.

8 Q. Which law firm was that?

9 A. I did my training with a firm called Farrer &  
10 Company of 66 Lincoln's Inn Fields, London.

11 (Telephone interruption.)

12 MS. WIVELL: Can we go off the record,  
13 please.

14 THE REPORTER: Off the record, please.

15 (Discussion off the record.)

16 BY MS. WIVELL:

17 Q. Now, sir, a little bit ago I asked you what your  
18 duties were as corporate secretary, and you gave me  
19 a -- I'm sorry, as company secretary, and you gave me  
20 a list of duties. Is that a complete list, sir?

21 A. Yes, I would say it's a complete list.

22 Q. There's nothing else that you can think of?

23 A. Nothing immediately, no.

24 Q. All right. How long have you been the company  
25 secretary for B.A.T. Industries?

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1 A. Four years. I became company secretary on 1st  
2 August 1993.

3 Q. What did you do before that, sir?

4 A. Before that I was an assistant solicitor to  
5 B.A.T. Industries.

6 Q. When did you become an assistant solicitor for  
7 B.A.T. Industries?

8 A. 1st October 1990.

9 Q. What did you do before that?

10 A. Before that I was employed by a law firm in the  
11 city of London.

12 Q. Which firm?

13 A. A firm called Gouldens, G-o-u-l-d-e-n-s.

14 Q. How long were you -- were you with that firm?

15 A. Approximately two years.

16 Q. What did you do before that?

17 A. Before that I worked for another law firm again  
18 in the city of London called Holman, Fenwick &  
19 Willan.

20 Q. How long were you -- were you with that firm?

21 A. Approximately a year.

22 Q. What did you do before that?

23 A. Before that I was a student. I worked for the  
24 Royal Bank of Scotland for one year and I combined  
25 that with the second year of a postgraduate degree.

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1 Q. What are your degrees in, sir?

2 A. I have a bachelor of arts degree in law and I  
3 have a master of laws degree.

4 Q. Have you ever been deposed before?

5 A. I have not.

6 Q. Have you ever given testimony before?

7 A. I have.

8 Q. In what circumstance?

9 A. I gave testimony in a coroner's court in  
10 connection with a -- a road traffic accident, fatal  
11 road traffic accident.

12 Q. Have you ever given any other testimony?

13 A. Could I at this stage consult with my lawyer,  
14 please?

15 MS. McGARRY: Are you talking about oral  
16 testimony?

17 MS. WIVELL: Yes.

18 MS. McGARRY: Does that answer your  
19 question or do you need to speak with me?

20 THE WITNESS: I'd like to speak with you,  
21 please.

22 MS. WIVELL: All right. Let's go off the  
23 record.

24 THE REPORTER: Off the record, please.

25 (Recess taken.)

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1 BY MS. WIVELL:

2 Q. I'm going to withdraw the last question and I'm  
3 going to rephrase it this way: Sir, have you ever  
4 given oral testimony in any matter relating to your  
5 work while you were an adult?

6 A. No.

7 Q. All right. Have you given written testimony  
8 under oath?

9 A. I have filed affidavits.

10 Q. All right. Have you filed any other kind of  
11 written testimony under oath?

12 A. Not that I recall.

13 Q. All right. You mentioned that you had given  
14 affidavits. In what -- strike that.

15 What was the reason for the affidavits?

16 A. I have sworn various affidavits in connection  
17 with the litigation to which B.A.T. Industries is a  
18 party in the United States.

19 Q. All right. Is that cigarette litigation?

20 A. Yes, it is.

21 Q. Have you given any other kind of affidavit?

22 A. It is possible in the course of my employment as  
23 the company secretary of B.A.T. Industries that I  
24 would have sworn affidavits from time to time in  
25 connection with administrative legal issues for the

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1 company, but I can't recall specifically what those  
2 would have been.

3 Q. Have any of those affidavits involved cigarette  
4 litigation?

5 A. Not to my knowledge, no.

6 Q. How many affidavits have you given under oath  
7 with regard to the cigarette litigation?

8 A. I really couldn't tell you. Quite a lot. It  
9 would be tens, possibly -- possibly a hundred or  
10 more.

11 Q. And you have filed an affidavit under oath in  
12 the State of Minnesota litigation, haven't you, sir?

13 A. I have.

14 Q. To whom do you report as company secretary for  
15 B.A.T. Industries?

16 A. I have essentially two reporting lines -- or  
17 three reporting lines. I report to the general  
18 counsel, the solicitor to B.A.T. Industries, and I  
19 also report in a practical -- on a practical basis to  
20 the chief executive and I suppose to the chairman as  
21 well, --

22 Q. All right.

23 A. -- although that's in connection with my  
24 responsibilities as the secretary of the board.

25 Q. And the general counsel is presently whom?

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- 1 A. Stuart Chalfen.
- 2 Q. And the CEO is?
- 3 A. Martin Broughton.
- 4 Q. And the chairman?
- 5 A. Lord Cairns.
- 6 Q. Have you ever been on the board of B.A.T.
- 7 Industries P.L.C.?
- 8 A. No, I have not.
- 9 Q. Do you attend board meetings of B.A.T.
- 10 Industries P.L.C.?
- 11 A. I do.
- 12 Q. When did you start attending meetings of B.A.T.
- 13 Industries?
- 14 A. When I became the corporate secretary, company
- 15 secretary, in 1993.
- 16 Q. Do you have any employees under your control,
- 17 sir?
- 18 A. Yes, I do.
- 19 Q. Who -- I'm sorry, strike that.
- 20 How many employees do you have under your
- 21 control?
- 22 A. I have six.
- 23 Q. Who are they?
- 24 A. I have two assistant secretaries, a manager of
- 25 secretarial services and three secretaries, typists,

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1 administrators.

2 Q. Who are the two assistant secretaries?

3 A. Anthony Robert Holliman, H-o-l-l-i-m-a-n; Derek  
4 Woodward.

5 Q. Sir, you used the phrase, I believe, "reporting  
6 lines of authority" just a moment or two ago. Is  
7 that right?

8 A. I don't know. You'll have to read that back to  
9 me from the -- from the record.

10 Q. All right. Well let's see if I can find it.

11 I'm sorry. You said, "I have essentially two  
12 reporting lines -- or three reporting lines." What  
13 did you mean by "reporting lines"?

14 A. I meant those to whom I'm accountable for the  
15 discharge of my responsibilities.

16 Q. Now, sir, you understand that the deposition  
17 that we're taking here today is being taken pursuant  
18 to Minnesota Rule 30.02(f); correct?

19 A. I think that is correct. I -- I -- I can't  
20 remember. If it was in the deposition notice, that  
21 was in the deposition notice.

22 Q. And, sir, you understand that you are here today  
23 pursuant to that deposition notice; right?

24 A. I understand I'm here pursuant to a deposition  
25 notice.

1 Q. And do you understand that that deposition  
2 notice requires B.A.T. Industries P.L.C. to produce a  
3 person qualified to testify as to matters known or  
4 reasonably available to B.A.T. Industries concerning  
5 the issues of the jurisdiction of B.A.T. Industries  
6 to the court in Minnesota?

7 A. I understand that to be the --

8 Q. All right. And so you understand that the  
9 deposition notice that this deposition is being taken  
10 under is actually for B.A.T. Industries P.L.C.;  
11 right?

12 A. Yes, I understand that.

13 Q. And you understand that you --

14 A. Can I just -- can I just correct you there and  
15 say the name of the company is B.A.T. Industries  
16 P.L.C., B stop A stop T.

17 Q. By "stop," you mean period; right?

18 A. Yes, I do. Sorry, I beg your pardon.

19 Q. Okay. Now, sir, do you understand -- I'm --  
20 strike that.

21 You have been designated as the corporate  
22 representative of B.A.T. Industries, haven't you?

23 A. Yes, I have.

24 Q. And you have agreed to speak on its behalf at  
25 this deposition, haven't you?

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1 A. I have.

2 Q. And when you give your answers today, you are  
3 speaking on behalf of B.A.T. Industries; right?

4 A. In relation to matters under their control,  
5 yes. In relation to -- I think generally that that  
6 would be the case, yes.

7 Q. All right. And you have consented to --

8 A. Save -- can I just say, though, save to the  
9 extent that I'm asked for my personal opinions on  
10 matters, clearly I'm expressing a personal opinion.

11 Q. Sir, we -- since you've never been deposed or  
12 given testimony before, I have to warn you the court  
13 reporter can only take down one of us at a time. And  
14 I'll try really hard not to speak over the top of  
15 your answers if you will agree to not try and speak  
16 over the top of my questions. Is that --

17 A. I'll do my best. I beg your pardon.

18 Q. You just did it again. We have to work really  
19 hard at that, sir. Okay?

20 A. Yes, I understand.

21 Q. All right. You have consented to speak for  
22 B.A.T. Industries at this deposition today; right?

23 A. Yes.

24 Q. And you understand that your testimony here  
25 today is binding on B.A.T. Industries; right?

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1 A. Yes.

2 Q. Now do you have authority to speak on B.A.T.

3 Industries' behalf during this deposition today?

4 A. I do.

5 Q. So for this deposition it would be safe to say

6 you are B.A.T. Industries' spokesperson; right?

7 A. Yes.

8 Q. Do you understand that the answers which you

9 give in this deposition to the questions that I ask

10 must be answered fully not only on what you know

11 personally but also on knowledge available to B.A.T.

12 Industries?

13 MS. McGARRY: Objection. You may answer.

14 A. I understand that I can -- well I can only

15 answer as to matters about which I have knowledge.

16 Q. Now do you understand that the answers you give

17 in this deposition to the questions I ask must be

18 answered completely, based not only on what you know

19 personally but also on knowledge available to B.A.T.

20 Industries?

21 MS. McGARRY: Objection.

22 A. I understand that I can -- I can answer

23 questions based on the knowledge that I have

24 personally, whether that knowledge is personal to me

25 or whether it's knowledge that I have obtained from

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1 my responsibilities as company secretary. I can't  
2 testify to matters about which I know nothing,  
3 whether it's in the knowledge of B.A.T. Industries or  
4 not.

5 Q. Well, sir, let me ask you this: What  
6 preparation did you do to get ready for today's  
7 deposition?

8 A. I met with my counsel.

9 Q. Anything else?

10 A. I may have carried out some research within the  
11 company. I did carry out some research within the  
12 company.

13 Q. What research did you carry out within the  
14 company?

15 A. I would have spoken to people in my departments,  
16 check one or two facts.

17 Q. Well when you say "I would have spoken" --

18 A. Well I did.

19 Q. You have to let me --

20 A. Sorry.

21 Q. You have to let me finish with my question,  
22 sir.

23 MS. McGARRY: And you have to give me  
24 enough time to object.

25 Q. Now, sir, when you say, "I would have spoken to

1 people in my" department, did you speak to people in  
2 your department?

3 A. Yes, I did.

4 Q. Who did you speak to?

5 A. I spoke to the manager of secretarial services  
6 and I also spoke with Mr. Woodward.

7 Q. Who is the manager of secretarial services?

8 A. Can I also say that I spoke to some other people  
9 as well?

10 Q. All right. Well why don't you first of all  
11 answer -- tell me who the manager of secretarial  
12 services is.

13 A. Mr. Ben Matthews.

14 Q. What did you talk to Mr. Matthews about?

15 A. I asked him to check some information about  
16 the -- relating to the accounts of Brown & Williamson  
17 and BATUS.

18 Q. What do you mean by "accounts"?

19 A. I wanted to find out whether Brown & Williamson  
20 and BATUS filed accounts which were publicly  
21 available.

22 Q. And what did you find out?

23 A. I found out that Brown & Williamson files  
24 accounts in certain states in the United States,  
25 abbreviated tax accounts, and I found out that BATUS

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1 pro -- produces consolidated accounts which are filed  
2 with the IRS, the Internal Revenue Service, but they  
3 are not otherwise publicly available.

4 Q. All right. Who else did you talk to in  
5 preparation for your deposition today?

6 A. I spoke to Hilary Barton.

7 Q. Who is Hilary Barton?

8 A. She is the head of corporate planning at B.A.T.  
9 Industries.

10 Q. What did you speak to Ms. Barton about?

11 A. I spoke to her about some matters relevant to --  
12 or a matter relevant to a document which she had  
13 authored in 1992, I believe.

14 Q. What was the nature of the document?

15 A. The document was a guideline document issued to  
16 Brown & Williamson.

17 Q. The document was a guideline document written by  
18 Hilary Barton that was issued to Brown & Williamson?

19 A. Yes.

20 Q. All right. And what was her position at the  
21 time she wrote this guideline document?

22 A. She was head of planning at B.A.T. Industries.

23 Q. What was the subject of the document?

24 A. It was a guideline issued by B.A.T. Industries,  
25 which is the document that sets out the -- starts the

1 process of the planning process.

2 Q. What do you mean by "planning process"?

3 A. Well B.A.T. Industries issues guidelines to its  
4 major operating subsidiaries, and based on those  
5 guidelines, which give an indication of the level of  
6 return which B.A.T. Industries is looking for from  
7 its operating companies, operating subsidiaries, the  
8 operating group in question will then produce a -- a  
9 plan, a corporate plan. In fact, it -- may I just  
10 correct that? What the operating group does is,  
11 first of all, to produce a preview, which dem --  
12 which seeks to show how the operating group will --  
13 intends to perform for a particular period, which may  
14 be -- I think it's currently three years. It used to  
15 be five years I think at one point.

16 Q. Now in your last answer when you talked about  
17 the guideline that was issued by B.A.T. Industries to  
18 Brown & Williamson, you were talking about a level of  
19 expected return. You're talking about money, aren't  
20 you?

21 A. I'm talking about a number of factors; for  
22 example, the performance of the operating company in  
23 terms of market share, cash flow, profitability,  
24 possibly -- though I'm absolutely not sure on this  
25 one, possibly the dividend that B.A.T. Company may

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1 pay to its parent company.

2 Q. Now the document that you spoke to Ms. Barton  
3 about was a document that I have designated to be  
4 used in this deposition, wasn't it?

5 A. I really don't know. I -- I don't know.  
6 Perhaps it was.

7 Q. All right. Well let me ask it this way: Sir,  
8 how often does B.A.T. Industries issue such  
9 guidelines to its operating companies?

10 MS. McGARRY: Objection, B-A-T Industries.  
11 You may answer.

12 A. Guidelines are issued on an annual basis.

13 Q. And is Ms. Barton the person responsible for  
14 issuing those guidelines?

15 A. No. Essentially they are issued by -- with the  
16 authority of the Chief Executive's Committee.

17 Q. And what is the Chief Executive's Committee?

18 A. The Chief Executive's Committee is a group of  
19 three directors of B.A.T. Industries who are charged  
20 with the day-to-day responsibility for the management  
21 of B.A.T. Industries, and it comprises the -- the  
22 chief executive, the finance director and the  
23 managing director of tobacco.

24 Q. So every year the Chief Executive's Committee  
25 issues a directive or guideline to Brown & Williamson

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1 indicating the level of performance and return which  
2 it expects Brown & Williamson to return to B.A.T.  
3 Industries; is that right?

4 MS. McGARRY: Objection, misstates the  
5 prior testimony.

6 A. Every year the Chief Executive's Committee  
7 issues a guideline which sets out a number of  
8 factors, a number of expectations or anticipations as  
9 to the performance of an operating company for the  
10 forthcoming period. That pro -- that is a document  
11 which starts a process whereby the operating group  
12 then produces a plan for discussion with the Chief  
13 Executive's Committee.

14 Q. What is included in the plan?

15 A. There will be matters relevant to the things I  
16 previously stated, performance, how they intend to  
17 perform in the market, what they anticipate about  
18 their cash flows. It may contain information about  
19 dividends, potential dividends that they may -- they  
20 may pay. It will be a corporate plan for telling  
21 B.A.T. Industries how they expect to perform over the  
22 next period.

23 Q. All right. For how long have these annual  
24 guidelines been issued by the Chief Executive's  
25 Committee of B.A.T. Industries to Brown &

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1 Williamson?

2 A. Well the Chief Executive's Committee came into  
3 existence in 1993, and my recollection is that they  
4 have always been issued since 1993. Now they may  
5 have been issued by the Chairman's Policy Committee,  
6 which was the forerunner of the Chief Executive's  
7 Committee --

8 Q. All right.

9 A. -- before then.

10 Q. Is the Chief Executive's Committee referred to  
11 by the capital letters "CEC"?

12 A. It is generally, yes.

13 Q. All right. Now you mentioned there was a  
14 forerunner to the CEC.

15 A. Yes.

16 Q. And what was it called again?

17 A. It was called the Chairman's Policy Committee.

18 Q. And was that referred to by the capital letters  
19 "CPC"?

20 A. Yes, it was.

21 Q. Now, sir, going back for a moment to the CEC,  
22 the Chairman's Executive -- I'm sorry, the Chief  
23 Executive's Committee, who forms the Chief  
24 Executive's Committee?

25 A. The chief executive, Martin Broughton.

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1 Q. And that is a B.A.T. Industries committee?

2 A. It's not a formal committee of the board of  
3 B.A.T. Industries in the sense that it's a  
4 subcommittee of the board. What it is is a committee  
5 established by the delegated authority of the  
6 company.

7 Q. Now what do you mean when you say "the delegated  
8 authority of the company"?

9 A. The delegated authority is a statement approved  
10 by the board of B.A.T. Industries which sets out the  
11 rationale by which the operations -- the various  
12 operating subsidiaries of the group will operate  
13 essentially and talks about levels of reference  
14 required to the holding company on -- in terms of  
15 important matters. Can I -- may I please just expand  
16 on my answer there.

17 B.A.T. Industries is -- is a holding company.  
18 What it does is to own investments, and those  
19 investments are essentially the shares in a number of  
20 companies who carry on business. The companies in  
21 which it owns shares essentially carry on two types  
22 of business: either tobacco, the manufacture and  
23 distribution of tobacco products; or the sale of  
24 insurance and financial services products.

25 And the delegated authority system recognizes

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1 that B.A.T. Industries P.L.C., which employs  
2 approximately a hundred people, cannot manage the  
3 day-to-day affairs of the operating subsidiaries and  
4 therefore delegates autonomy to those subsidiaries to  
5 run their affairs on a day-to-day basis but requires  
6 major decisions; for example, matters involving  
7 substantial capital expenditure, to be the subject of  
8 a prior reference to the Chief Executive's Committee  
9 and, if it's a very substantial amount, may also  
10 require reference to the board of B.A.T. Industries  
11 before those decisions are implemented.

12 Q. Move to strike the nonresponsive portion of the  
13 answer.

14 Sir, would -- it would be fair to say then that  
15 since the formation of the Chief Executive's  
16 Committee in 1993, that committee has issued  
17 guidelines on a yearly basis to Brown & Williamson  
18 and those guidelines -- strike that.

19 It would be fair to say that since the formation  
20 of the Chief Executive's Committee in 1993, that  
21 committee has issued guidelines on a yearly basis to  
22 Brown & Williamson; correct?

23 A. I believe that's the case, yes.

24 Q. And those guidelines set forth B.A.T.  
25 Industries' expectations concerning Brown &

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1 Williamson's performance in the coming year;

2 correct?

3 A. That would be --

4 MS. McGARRY: Objection, misstates the  
5 prior testimony. You may answer.

6 A. They set forward --

7 They set forward B.A.T.'s expectations or  
8 anticipations about how the company -- the operating  
9 company; in this case, Brown & Williamson, would  
10 perform in a number of factors in the forthcoming  
11 year.

12 Q. And Brown & Williamson must respond to those CEC  
13 guidelines; correct?

14 A. Brown & Williamson would be expected to produce  
15 a -- a corporate plan or a -- a preview, I should  
16 say. So I beg your pardon.

17 Q. They are required to produce this preview,  
18 aren't they?

19 A. I don't know of any specific requirement, but  
20 it's always happened and there is an expectation that  
21 that will happen.

22 Q. And if that expectation were not met, the  
23 executives of Brown & Williamson could be liable for  
24 sanction; correct?

25 MS. McGARRY: Objection, calls for

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1 speculation.

2 A. I'm afraid I can't -- that's a hypothetical. I  
3 can't answer it. It's never happened, to my  
4 knowledge.

5 Q. All right. Now, sir, you mentioned that the  
6 predecessor to the Chairman's Policy Committee -- or  
7 I'm sorry.

8 You mentioned that the -- the predecessor to the  
9 CEC was the Chairman's Policy Committee; right?

10 A. Indeed.

11 Q. All right. Was that a B.A.T. Industries  
12 committee?

13 A. That was constituted again under the terms of  
14 the delegated authority, having a similar role to the  
15 Chief Executive's -- a role which is similar to the  
16 role the Chief Executive's Committee now has.

17 Q. It would be fair to say that these committees,  
18 the CEC and the Chairman's Policy Committee, existed  
19 within B.A.T. Industries; correct?

20 A. Could you -- sorry, could you clarify what you  
21 mean by "existed"? I --

22 Q. All right. Well these -- these two committees  
23 operated; right?

24 A. Yes.

25 Q. All right. And those committees included

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1 members of the board of B.A.T. Industries; right?

2 A. They did indeed.

3 Q. All right. They were not formal committees of  
4 the board of B.A.T. Industries P.L.C.?

5 A. They were not regarded as subcommittees of the  
6 board of B.A.T. Industries.

7 Q. All right. But they were committees within  
8 B.A.T. Industries?

9 A. Yes, they were, and they were constituted, as I  
10 say, under the terms of the delegated authority, a  
11 document approved by the board of B.A.T. Industries.  
12 Can I just also say that, just to -- if I may correct  
13 something which you said, I think you said it  
14 included members of the board. The only members of  
15 the relevant committees were members of the board of  
16 B.A.T. Industries.

17 MS. WIVELL: Mr. LaBorde, could you get out  
18 Exhibit 2301.

19 And can we go off the record for a second.

20 THE REPORTER: Sure, off the record.

21 (Recess taken.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been previously marked  
24 as Exhibit 2301, this is a document from B.A.T.  
25 Industries P.L.C. entitled "DELEGATED AUTHORITY";

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1 right?

2 A. Yes. Can I just ask if we can take it that when  
3 you refer to "B.A.T. Industries," you're referring to  
4 B-A-T, because I don't want to correct it every time  
5 to B-A-T Industries and --

6 Q. All right. Well I will tell you --

7 Let me ask you this: Have you seen the video --  
8 videotape called The World of B.A.T.?

9 A. I don't think I have, no.

10 Q. All right. You understand that there is a  
11 videotape that dis -- discusses the worldwide  
12 business of B.A.T. Industries?

13 A. I know that videotapes have been made that talk  
14 about the operations of the group of companies that  
15 make up the B.A.T. Industries Group.

16 Q. And do you understand that in that videotape the  
17 group calls itself the B.A.T. Group?

18 MS. McGARRY: Objection.

19 A. I -- I don't know because I've not seen the -- I  
20 don't think I've seen the video.

21 Q. All right. One of the reasons that I call it  
22 the B.A.T. Group is because I hear -- I have heard in  
23 that videotape B.A.T. calling itself B.A.T. as  
24 opposed to B-A-T, so please forgive me.

25 MS. McGARRY: Move to strike. It's not a

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1 question.

2 Q. Now, sir, we have -- you have in front of you

3 Exhibit 2301; right?

4 A. Yes, I do.

5 Q. And this is the B.A.T. Industries delegated

6 authority; right?

7 A. Yes.

8 Q. And when you were referring to delegated

9 authority in your previous answer before the break,

10 this is the document you were referring to; right?

11 A. Yes, it was.

12 Q. Now, sir, this delegated authority is something

13 you signed; right?

14 A. Indeed.

15 Q. This one's dated July 1994.

16 A. Yes.

17 Q. Now there have been previous written delegated

18 authorities; correct?

19 A. Yes, there have.

20 Q. Now, when you were talking about the CEC and the

21 Chairman's Policy Committee --

22 A. Yes.

23 Q. -- as being constituted under the delegated

24 authority, you were talking about the fact that their

25 authority arises out of Exhibit 2301?

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1 A. Indeed.

2 Q. Or its predecessor; right?

3 A. Yes, indeed.

4 Q. All right. Now this document doesn't say  
5 anything about either of those committees, does it?

6 MS. McGARRY: Objection. You may answer.

7 A. This -- this document refers in the first  
8 paragraph to the Chief Executive's Committee, --

9 Q. All right.

10 A. -- identified as the CEC.

11 Q. Does it refer at all to the Chairman's Policy  
12 Committee?

13 A. No, but that is just -- that's explained by the  
14 fact that this particular version of the delegated  
15 authority is dated 26 July 1994, and the Chairman's  
16 Policy Committee had ceased to exist --

17 Q. All right.

18 A. -- by that time.

19 Q. Does --

20 MS. McGARRY: I'm -- I'm sorry. Can I just  
21 remind the witness to give me time to object between  
22 a question and answer.

23 THE WITNESS: Okay.

24 MS. McGARRY: Thank you. You can go ahead.

25 Q. Are -- were there -- strike that.

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1 Are there other committees that exist within  
2 B.A.T. Industries that are not referred to in this  
3 document?

4 A. There are committees, other committees -- there  
5 are committees of the board of B.A.T. Industries,  
6 yes.

7 Q. All right. Are there also committees set up by  
8 the chair of B.A.T. Industries that are not referred  
9 to in this document?

10 A. I -- apart from the committees of the board that  
11 I've referred to, I don't believe there are any  
12 committees set up by the chair.

13 Q. All right. Are there --

14 A. I'm sorry. I don't believe there are any  
15 committees established by the chair of B.A.T.  
16 Industries other than the committees of the board to  
17 which I've referred to.

18 Q. Are there committees established by the chief  
19 executive officer of B.A.T. Industries which are not  
20 referred to in Exhibit 2301?

21 A. Not that I'm aware of, no.

22 Q. All right. Now in the -- there have been in the  
23 past -- strike that.

24 There have been in the past committees  
25 established by the chair of B.A.T. Industries which

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1 have not been referred to in the delegated authority  
2 by name; right?

3 MS. McGARRY: Objection, ambiguous. You  
4 may answer.

5 A. I said before I think that I wasn't aware of any  
6 committees other than those -- other than the CPC,  
7 the CEC and the committees -- the board committees  
8 appointed by the board. The chairman doesn't -- the  
9 chairman doesn't make decisions on behalf of the  
10 board. The board makes its decisions collectively.

11 Q. All right. Well have there been committees  
12 of -- set up by the chief executive officer which  
13 have existed under the framework of B.A.T. Industries  
14 which have not been specifically referred to by name  
15 in the delegated authority document?

16 MS. McGARRY: Objection. You may answer.

17 A. I -- I -- I can't immediately recall any  
18 committees established by the chief executive of  
19 B.A.T. Industries outside the framework of the  
20 delegated authority or the committees of the board.

21 Q. Well I'm not talking about outside the  
22 framework. I'm talking about which the chair has set  
23 up which are just not specifically referred to by  
24 name in the delegated authority document.

25 A. There --

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1 MS. McGARRY: Objection. Go ahead.

2 A. There are a number of committees of the board  
3 which are not referred to in this document.

4 Q. All right. What committees of the board exist  
5 today which are not referred to in Exhibit 2301?

6 A. The Remuneration Committee of the board, the  
7 Nominations Committee of the board, the Audit  
8 Committee of the board, Share Options Subcommittee of  
9 the board. I believe that there is also a committee  
10 called the Commercial Paper Committee, but that has  
11 not met during my time as secretary. And there is  
12 also a committee called the Share Repurchase  
13 Committee of the board, and I think that has not --  
14 also has not met during my time as secretary of the  
15 company.

16 Q. All right. Are there any other committees of  
17 the board which are not specifically referred to in  
18 Exhibit 2301?

19 A. There was at one time a committee called the --  
20 I can't -- I can't actually remember what it was  
21 called now, but it was essentially a periodic  
22 gathering of a number of the directors to discuss  
23 matters related to external affairs issues. I think  
24 it was actually called the External Affairs  
25 Committee.

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1 Q. Well I have seen reference -- well, strike  
2 that.

3 Are there any others that have existed in the  
4 past but which do not exist now?

5 A. Committees of the board?

6 Q. Yes.

7 A. I can't immediately recollect.

8 Q. Are there any committees set up by the chairman  
9 which have existed in the past but which do not exist  
10 today?

11 MS. McGARRY: Objection.

12 A. I -- I don't know about committees actually set  
13 up by the chairman. There -- the only committee that  
14 I can think of to which you may be referring would be  
15 the Tobacco Strategy Group, previously called the  
16 Tobacco Strategy Review Team, of which the chairman  
17 was, I believe, a member, which is not -- it was not  
18 a committee as such. It was a -- a group of people,  
19 some of them directors of B.A.T. Industries and some  
20 of them the number ones that -- the chief executives  
21 of the major tobacco operating subsidiaries.

22 As I say, that was not a committee of the  
23 board. It was not a committee as such. It was a --  
24 essentially a team, as the name -- a team or a group,  
25 as the name implies.

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1 Q. It was a team set up by the chairman of B.A.T.  
2 Industries P.L.C.; right?

3 MS. McGARRY: Objection.

4 A. I do not know whether the chairman of B.A.T.  
5 Industries established the team, but I know that he  
6 was a member.

7 Q. Sorry.

8 Now, sir, I want to go back to the preparation  
9 you did for your deposition today. You talked about  
10 a couple of people you talked to, and then you had  
11 mentioned earlier that you'd spoke to some other  
12 individuals.

13 A. Yes, I think I mentioned Hilary Barton.

14 Q. Who else did you speak to in preparation for  
15 your deposition today?

16 A. I spoke to Richard Desmond.

17 Q. What's Mr. Desmond's position?

18 A. He is --

19 MS. McGARRY: Objection. Go ahead.

20 A. Mr. Desmond is the group treasurer of B.A.T.  
21 Industries.

22 Q. What did you speak to him about?

23 A. I spoke to him about matters relating to the  
24 financing of the acquisition by BATUS of Farmers  
25 Group in 1988.

- 1 Q. You're talking about Farmers Insurance?
- 2 A. Yes.
- 3 Q. What else did you talk to him about?
- 4 A. Well essentially matters -- matters of that --
- 5 related to that.
- 6 Q. Specifically what did you talk about?
- 7 A. We spoke about the -- how the -- how BATUS
- 8 financed itself in connection with that transaction,
- 9 and we spoke about the restructuring of the B.A.T.
- 10 Industries Group following the bid for the shares of
- 11 B.A. -- the public shares of B.A.T. Industries by
- 12 Hoylake Investments in 1989.
- 13 Q. Anything else that you talked about?
- 14 A. Well those -- those matters, matters -- matters
- 15 pertaining to those -- those issues.
- 16 Q. All right. Did you speak to anyone else in
- 17 preparation for your deposition today?
- 18 A. I spoke with my counsel, with Elizabeth McGarry,
- 19 Jacob Pultman and Kevin Lewis of Simpson Thacher &
- 20 Bartlett; and Martyn Gilbey, litigation counsel of
- 21 British-American Tobacco Company Limited, BATCO.
- 22 Q. Anyone else that you talked to?
- 23 A. I spoke to my assistant secretary, Derek
- 24 Woodward. I can't recall whether I mentioned that
- 25 before.

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- 1 Q. And what did you speak to Mr. Wood about?
- 2 A. Mr. Woodward.
- 3 Q. Woodward, pardon me.
- 4 A. I think I asked him to check some -- a fact,  
5 some facts relating to insurance policies, and there  
6 was something else I asked him about. I can't  
7 presently recall. There was another -- another  
8 question I asked him about. Oh, I asked him to  
9 recheck the information about the -- the BATUS  
10 accounts, the consolidated accounts, to see whether  
11 they were filed or publicly available.
- 12 Q. And you learned that they were not; right?
- 13 A. I learned that they were not.
- 14 Q. And again what were these accounts that you  
15 checked on?
- 16 A. These are the consolidated group accounts of  
17 BATUS Holdings, which are filed with the Internal  
18 Revenue Service here.
- 19 Q. But are not available publicly?
- 20 A. Not available publicly.
- 21 Q. Is there anything -- no, strike that.
- 22 You said you talked to Mr. Woodward about  
23 insurance policies. What insurance policies did you  
24 discuss with him?
- 25 A. I discussed with him the group directors' and

1 officers' liability policies, and I also discussed  
2 with him the position relating to product -- sorry,  
3 can I, sorry, correct that -- public liability.

4 Q. Did you say "public liability"?

5 A. Yes, "public liability."

6 Q. All right. With regard to the group directors'  
7 and officers' liability policy, what did you talk  
8 with Mr. Woodward about?

9 A. I mentioned to him my understanding of the  
10 position with the group directors' and officers'  
11 liability policy, how it was organized and how the  
12 premiums were paid.

13 Q. And what did he tell you?

14 A. He didn't tell me anything. I asked him that as  
15 a prelude to asking him a question about the public  
16 liability policy.

17 Q. What question did you ask?

18 A. I asked him to con -- to see if he could confirm  
19 for me whether an excess policy refers to what --  
20 what we would call in the United -- I think what may  
21 be known here, in fact, as a deductible; i.e., the  
22 first "X" percent of any claim will not be picked up  
23 by the insurer, or whether in fact it meant a  
24 reference to additional coverage beyond that provided  
25 by the main policy.

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1 Q. Does B.A.T. Industries P.L.C. have insurance  
2 which it believes would cover any damages which might  
3 be paid in this case?

4 MS. McGARRY: Objection. It's irrelevant.  
5 You may answer if you know.

6 A. At the current time B.A.T. Industries does not  
7 know the answer to that question. Investigations are  
8 being conducted into the issue, and a position is not  
9 yet clear.

10 Q. Does B.A.T. Industries have insurance policies  
11 which it believes may provide insurance for damages  
12 which may have to be paid in this case?

13 MS. McGARRY: Objection, asked and  
14 answered.

15 A. The -- B.A.T. Industries doesn't believe  
16 anything. B.A.T. Industries is currently  
17 investigating the position.

18 Q. Does B.A.T. have policies of insurance with  
19 regard to product-liability cases -- I'm -- strike  
20 that.

21 Does B.A.T. Industries have insurance policies  
22 for product liability arising out of cigarette  
23 litigation?

24 MS. McGARRY: Objection, asked and  
25 answered.

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1 A. B.A.T. Industries is currently investigating the  
2 position to see what policies exist which may -- may  
3 or may not provide a cover in respect of claims being  
4 made against it in U.S. litigation.

5 Q. Has B.A.T. Industries paid premiums to any  
6 insurance company for insurance which covers acts or  
7 omissions here in the United States?

8 A. B.A.T. Industries has organized directors' and  
9 officers' liability insurance, and that provides  
10 directors' and officers' liability insurance for all  
11 the directors and officers of companies,  
12 subsidiaries, owned by B.A.T. Industries as well as  
13 B.A.T. Industries itself.

14 The history of the matter is that until the  
15 early 1990s, most operating companies in the group,  
16 most of the operating subsidiaries, would have  
17 obtained -- did obtain their own directors' and  
18 officers' liability insurance and paid the premiums  
19 for that insurance. A calculation was done at B.A.T.  
20 Industries which showed that the -- a greater amount  
21 of coverage could be -- in the aggregate could be  
22 obtained for directors' and officers' liability if  
23 the aggregate amounts which were being paid  
24 separately by the operations were pooled together, so  
25 essentially the policy is now arranged by B.A.T.

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1 Industries and provides coverage for all of the  
2 subsidiaries.

3 Q. And who is that pol -- that coverage with?

4 A. I'm absolutely -- I'm not sure. I think it's  
5 AIG, but I'm not sure.

6 MS. McGARRY: Had you finished your  
7 previous answer?

8 THE WITNESS: I -- well there was -- the  
9 only point I wanted to make, continue to make, was  
10 the fact that the premium for the coverage is then  
11 picked up by the relevant operating companies.

12 Q. Just so we're clear here, it is correct to say  
13 that B.A.T. Industries since 1990 -- since the early  
14 1990s has -- is the insured on an officers' and  
15 directors' liability policy?

16 A. No, that's not correct.

17 Q. Okay.

18 A. The insured since the -- the insured since the  
19 early 1990s -- in fact, it's the same as before. All  
20 of the directors and officers of companies within the  
21 B.A.T. Industries Group are -- are insured under the  
22 terms of the policy. B.A.T. Industries merely  
23 organizes the policy, pays the premium and then has  
24 the premium distributed on some basis between the  
25 various operations.

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1 Q. All right. So would it be fair to say then that  
2 the officers and directors of B.A.T. Industries are  
3 insured in the United States for acts that they might  
4 commit? Correct?

5 A. I couldn't -- can't answer that because I'm not  
6 conversant with the terms of the -- the policies.

7 Q. Have you seen the policies?

8 A. I haven't seen the policies other than in  
9 passing.

10 Q. You didn't look at them in preparation for your  
11 deposition today?

12 A. I did not read the policies in preparation for  
13 my deposition.

14 Q. You understand --

15 MS. McGARRY: Give me time --

16 THE WITNESS: Sorry.

17 MS. McGARRY: -- to object.

18 THE WITNESS: I'm sorry.

19 MS. McGARRY: When she speaks fast, you  
20 don't have to answer fast.

21 MS. WIVELL: All right.

22 MS. McGARRY: Okay.

23 BY MS. WIVELL:

24 Q. But you understand that B.A.T. Industries pays  
25 part of the premiums?

1 MS. McGARRY: Objection, asked and  
2 answered. You may answer it again.  
3 A. I understand that the premium is divided up  
4 between all the companies that take the benefit of  
5 the policy.  
6 Q. And since B.A.T. Industries' officers and  
7 directors receive part of the benefit from the  
8 policy, they pay part of -- the company pays part of  
9 the premium?  
10 A. I believe that to be the case.  
11 Q. You know that to be the case, don't you, sir?  
12 A. I believe it to be the case.  
13 Q. Did you ask Mr. Woodward if that was the case?  
14 A. I didn't ask Mr. Woodward whether that was the  
15 case.  
16 Q. But based on your -- what you know from being  
17 company secretary, you believe that to be the case?  
18 A. Yes, I do.  
19 Q. And also part of the cost of that policy is paid  
20 by Brown & Williamson, isn't it?  
21 A. I believe -- well if I go back, what happens is  
22 that the distribution of the premium, the premium  
23 amongst the various operations and particularly  
24 amongst the operations -- the tobacco operations, is  
25 dealt with not by B.A.T. Industries. B.A.T.

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1 Industries passes on the charge to British-American  
2 Tobacco Holdings, B.A.T. Holdings, and B.A.T.  
3 Holdings then, as I understand it, divides up the  
4 premium charge amongst the tobacco operations.

5 Q. And Brown & Williamson pays part of that  
6 premium, doesn't it?

7 A. I believe that to be the case. I do not know,  
8 but I believe that to be the case.

9 Q. Has notice been given to the insurer of any  
10 possible claim under that policy?

11 MS. McGARRY: I object. This is beyond the  
12 scope of the jurisdiction notice. Mr. Wilson is only  
13 here to testify about jurisdiction issues.

14 MS. WIVELL: And I believe this is a  
15 jurisdiction issue.

16 MS. McGARRY: No, I strongly disagree.  
17 If you know the answer to that question, you may  
18 answer.

19 A. I -- I do not know the answer to that question.

20 Q. In preparation for your deposition today, did  
21 you talk to anyone else?

22 A. Yes. In fact, I talked to the head of control  
23 and audit.

24 Q. Who is that?

25 A. Mr. Peter Radford.

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1 Q. What did you talk to Mr. Radford about?

2 A. I talked to Mr. Radford about the subject of the  
3 D&O policy.

4 Q. The D&O policy is the directors' --

5 A. Directors' and officers' --

6 Q. Let me finish.

7 The D&O policy is the group directors' and  
8 officers' liability policy we've just been talking  
9 about; right?

10 A. Yes, it is.

11 Q. What did you talk to Mr. Radford about?

12 A. I was eliciting information from him about how  
13 the premium was calculated and how the insurance was  
14 placed.

15 Q. All right. What did he tell you?

16 A. He told me essentially what I have just told  
17 you.

18 Q. Did he tell you anything else?

19 A. He talked to me about the public liability  
20 policies.

21 Q. Now what do you mean by "public liability  
22 policies"?

23 A. It would be where a company -- I'll give you an  
24 example. I suppose it would be where a company gets  
25 sued because it -- let's suppose -- let's suppose

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1 there's water on the floor. A third party happens to  
2 come into the company's premises and falls on the  
3 water and injures themselves. It would provide that  
4 sort of protection, for example. That would be a  
5 public liability policy.

6 Q. Does B.A.T. Industries have public liability  
7 policies?

8 A. It does.

9 Q. What do they cover?

10 MS. McGARRY: Objection. This is beyond  
11 the scope of the deposition.

12 A. Beyond what I've -- I'm sorry.

13 MS. McGARRY: Go ahead.

14 A. Beyond what I've just said to you, I -- I  
15 couldn't give you any other examples.

16 Q. Have you reviewed the policies?

17 A. No, I have not reviewed the policies.

18 MS. McGARRY: Please.

19 Q. Is there more than one policy?

20 MS. McGARRY: You may answer.

21 A. More than one policy for whom? Sorry.

22 Q. The pol -- does B.A.T. -- strike that.

23 Does B.A.T. Industries have more than one public  
24 liability policy?

25 A. I do not know whether B.A.T. Industries has more



1 than one public liability policy.

2 Q. Is there -- strike that.

3 Does the public liability insurance which B.A.T.  
4 Industries has in place, is it an aggregate policy  
5 like the group directors' and officers' liability  
6 policy?

7 MS. McGARRY: Objection. The question is  
8 ambiguous. You can try to answer it if you know.

9 A. Could you repeat the question.

10 Q. Well let me put it this way: Does the public  
11 liability policy or policies which B.A.T. Industries  
12 has -- has in place -- strike -- strike that.

13 Does B.A.T. Industries have a policy or policies  
14 of public liability insurance in place?

15 MS. McGARRY: Objection, asked and  
16 answered.

17 A. I understand B.A.T. Industries has a public  
18 liability policy.

19 Q. All right. And you just don't know as you sit  
20 here today whether it's one or more policies; right?

21 A. I know that B.A.T. Industries has a policy. I  
22 do not know whether B.A.T. Industries itself has more  
23 than one policy.

24 Q. All right.

25 A. I believe -- in fact, I believe it does have an

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1 excess policy, which I mentioned earlier.

2 Q. Who is the public liability policy with?

3 A. I cannot tell you, I'm sorry.

4 Q. Who is the excess policy with?

5 A. I -- again I cannot tell you.

6 Q. Does the public liability policy cover more than  
7 just B.A.T. Industries?

8 A. I believe the --

9 MS. McGARRY: Objection. You may answer.

10 A. I believe the public liability policy  
11 provides -- that I've referred to provides public  
12 liability coverage for B.A.T. Industries.

13 Q. Alone?

14 A. Yes, the -- yes, it does, yes, the public  
15 liability policy.

16 Q. All right. Did Mr. Radford tell you that?

17 A. Yes, he did.

18 Q. Does the excess policy cover just B.A.T.  
19 Industries?

20 A. I believe the excess policy provides coverage  
21 for all the companies in the group.

22 Q. The excess policy would provide coverage -- no,  
23 strike that.

24 The excess policy provides coverage for Brown &  
25 Williamson; correct?

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- 1 A. I believe that to be the case.
- 2 Q. And you understand that from Mr. Radford?
- 3 A. Yes.
- 4 Q. And the excess policy that's in place, a premium
- 5 is paid for that policy; correct?
- 6 A. Yes.
- 7 Q. That premium is paid in part by B.A.T.
- 8 Industries?
- 9 A. I believe that to be the case.
- 10 Q. And you understand that from your conversation
- 11 with Mr. Radford?
- 12 A. Yes.
- 13 Q. And the excess policy, a portion of the premium
- 14 for that excess policy is also paid by Brown &
- 15 Williamson, isn't it?
- 16 A. I believe that the premium is again distributed
- 17 amongst the companies who take the benefit of the
- 18 excess policy, similar to the position in relation to
- 19 the D&O policy that I mentioned earlier.
- 20 Q. And again the D&O policy that you referred to
- 21 earlier is the group directors' and officers'
- 22 liability insurance; right?
- 23 A. Yes.
- 24 Q. What are the policy limits of the public
- 25 liability policy?

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1 MS. McGARRY: Objection. This is  
2 completely beyond the scope, Martha.

3 A. I do not know.

4 Q. What are the policy limits for the excess  
5 liability?

6 A. I do not know.

7 Q. The excess liability policy provides coverage in  
8 the United States for B.A.T. Industries, doesn't it?

9 A. I -- I do not --

10 MS. McGARRY: Objection.

11 A. I do not know, I'm afraid.

12 Q. The excess policy provides liability insurance  
13 for Brown & Williamson's actions, doesn't it?

14 MS. McGARRY: Objection.

15 A. I -- I have no specific knowledge. I have not  
16 read the policy.

17 Q. Did Mr. Radford tell you anything about that  
18 issue when you spoke to him?

19 A. No, we did not discuss Brown & Williamson  
20 specifically in that con -- context.

21 Q. All right. Well did you discuss the coverage  
22 which was provided to associate companies when you  
23 dis -- talked with Mr. Radford?

24 MS. McGARRY: Objection.

25 A. We did not dis -- discuss any -- any companies

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1 specifically. We just discussed the principle of how  
2 the premium was apportioned without --

3 Q. And did you --

4 A. -- without reference to any specific company.

5 Q. And what did he tell you about how the policy  
6 premium was proportioned?

7 A. Well --

8 MS. McGARRY: Apportioned. Objection,  
9 asked and answered and irrelevant to this  
10 deposition.

11 A. He told me, as I've already mentioned, that the  
12 policy was -- the premium for the policy was  
13 apportioned amongst the companies that took the  
14 benefit, but he did not give me any figures and I do  
15 not know the -- the figures. I don't think he had  
16 the figures at hand.

17 Q. Is B.A.T. Industries a named insured on the  
18 excess policy?

19 MS. McGARRY: Objection.

20 A. I -- I do not know. I have not seen the  
21 policy.

22 Q. In preparation for your deposition today, have  
23 you -- strike that.

24 Did Mr. Radford tell you whether B.A.T.  
25 Industries was a named insured on the excess policy?

1 MS. McGARRY: Objection.

2 A. I do not recall.

3 Q. In preparation for your deposition today, did  
4 you talk to anyone else?

5 A. No, I believe that that's the people I've  
6 listed.

7 Q. Mr. Broughton is currently --

8 MS. McGARRY: Chief executive officer.

9 Q. -- chief executive officer of B.A.T. Industries;  
10 right?

11 A. Yes, he is.

12 Q. You did not talk to him in preparation for your  
13 deposition today?

14 A. No, I did not talk to Mr. Broughton in  
15 connection with my deposition today.

16 Q. Did you talk to Lord Cairns, --

17 A. I did not talk --

18 Q. -- the chairman?

19 A. I did not talk to Lord Cairns.

20 Q. All right. Sir Patrick Sheehy is the former  
21 chief executive officer and chairman of the board of  
22 B.A.T. Industries, isn't he?

23 A. Sir Patrick Sheehy became the chairman of B.A.T.  
24 Industries in 1982, and in those -- until  
25 Mr. Broughton's appointment as the chief executive in

1 1993, there was no separate chief executive and  
2 chairman. Sir Patrick Sheehy combined both roles  
3 essentially.

4 Q. And he held that position from 1982 until 1993?

5 A. No. He held that position until the 29th of --  
6 well he held the position of chairman until the 29th  
7 of December 1995, and he ceased to be chief  
8 executive, I believe, on the 1st of April 1993, at  
9 which time Mr. Broughton became the chief executive.

10 Q. Do you know the exact date when Mr. Sheehy  
11 became chair of B.A.T. Industries?

12 A. I believe he became the chairman of B.A.T.  
13 Industries on the 1st of October 1982.

14 Q. And it was announced the year before that he was  
15 going to be appointed to chair -- the chair position;  
16 isn't that true?

17 A. I do not know.

18 Q. Did you speak with Mr. Sheehy in preparation for  
19 your deposition today?

20 A. I did not.

21 Q. Have you ever spoken with Mr. Sheehy?

22 A. I've spoken with Mr. Sheehy in connection with  
23 my employment as the company secretary of B.A.T.  
24 Industries.

25 Q. All right. Who was chair of B.A.T. Industries

1 before Patrick Sheehy?

2 A. Sir Peter Macadam.

3 Q. Have you ever spoken with Mr. Macadam?

4 A. I believe some years ago I had a telephone  
5 conversation with him.

6 Q. What was the subject of that conversation?

7 MS. McGARRY: Objection, beyond the scope.

8 A. I think he was raising a complaint about not  
9 having received a -- a response to a communication to  
10 the company.

11 Q. Okay. Before Lord Cairns was chair of B.A.T.  
12 Industries, the chair was Sir Patrick Sheehy; right?

13 A. Yes, that's right.

14 Q. When Sir Peter Macadam was chair of B.A.T.  
15 Industries, was there a separate CEO?

16 A. I was not employed in the company at that time,  
17 but I believe that there was not a separate CEO.

18 Q. Now, sir, is there anyone who is better  
19 qualified or more suitable to testify regarding the  
20 jurisdiction issue which is the subject of this  
21 deposition today?

22 A. I find that a difficult question. I believe  
23 not, but there -- there may be others who can testify  
24 as well as me. I just simply don't know.

25 Q. All right. Why do you think that you're the --

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1 probably the best person to testify here today?

2 A. Because matters relating to the corporate  
3 structure of the company would be matters that would  
4 be within my general knowledge as the corporate  
5 secretary, as the company secretary of B.A.T.  
6 Industries.

7 Q. Well as the corporate secretary of B.A.T.  
8 Industries, do you have available to you for your  
9 review the corporate files?

10 MS. McGARRY: Of B.A.T. Industries?

11 MS. WIVELL: Yes.

12 A. I could call for files within B.A.T. Industries  
13 to review them if I required them.

14 Q. And B.A.T. Industries does keep such records of  
15 its past corporate conduct; right?

16 MS. McGARRY: Objection. You may answer.

17 A. In the ordinary course of its business, B.A.T.  
18 Industries keeps files. It keeps files of --

19 Q. And it does so as its -- as part of its ordinary  
20 course of business, doesn't it?

21 A. It does.

22 Q. Are there any documents that you reviewed in  
23 preparation for your deposition today?

24 A. I did review some documents in preparation for  
25 my deposition today.

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1 Q. What documents did you review?

2 A. Specifically I can't -- I can't really tell  
3 you. I reviewed them -- a number of documents. I --  
4 I couldn't really distinguish one from the other. If  
5 you presented those documents to me, I would be able  
6 to tell you whether I had seen them or not.

7 Q. Are there any that you specifically remember?

8 A. Well it may seem odd, but I actually don't  
9 recall any specific ones at the moment, but I'm sure  
10 you'll refresh my memory.

11 Q. Did you review Exhibit 2301 before our  
12 deposition today?

13 A. I don't believe I specifically reviewed this.  
14 It's a document I'm generally familiar with.

15 Q. Is there anything else that you did to get ready  
16 for your deposition today?

17 A. No. Beyond discussions with my counsel, no,  
18 discussions with those that I've previously  
19 mentioned.

20 Q. You didn't do any other investigation?

21 A. In connection with my swearing of affidavits in  
22 this matter, of course I have done investigations to  
23 prepare myself to be able to swear the affidavits,  
24 so -- but in relation specifically to this  
25 deposition, I think everything I've previously said

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1 is what I've done.

2 Q. When you swore the affidavits, that means you  
3 signed them; right?

4 A. Yes. In fact, one takes an oath and --

5 Q. Yes.

6 A. -- signs them.

7 Q. All right. And what investigation did you do  
8 when you prepared the affidavits?

9 MS. McGARRY: Objection, overbroad.

10 A. I would have made inquiries of personnel within  
11 B.A.T. Industries, possibly -- well occasionally  
12 people outside B.A.T. Industries who may have  
13 knowledge. I would have read documents.

14 Q. Did you go back and review documents from the  
15 files of B.A.T. Industries?

16 A. I did review some documents from the files of  
17 B.A.T. Industries.

18 Q. All right. What else did you do to prepare  
19 those affidavits?

20 MS. McGARRY: Objection, overbroad.

21 A. I consulted with my counsel.

22 Q. Anything else?

23 A. I have from time to time spoken to other  
24 employees of B.A.T. Industries. I think I've  
25 previously mentioned that.

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1 Q. Who do you specifically remember speaking to  
2 apart from your counsel outside of B.A.T. Industries  
3 in preparation for the affidavits that you have  
4 filed?

5 MS. McGARRY: This is in connection with  
6 the possibly up to 100 affidavits that he mentioned  
7 earlier?

8 MS. WIVELL: Objection.

9 MS. McGARRY: Is that what you're referring  
10 to, or is the affidavit that in this case that you  
11 previously asked him about?

12 If counsel's not going to clarify, I'm going to  
13 object as it's grossly overbroad, asking the witness  
14 to recall everyone he spoke to in connection with  
15 preparing scores of affidavits. To the extent you  
16 can recall, you may answer.

17 A. Outside B.A.T. Industries, apart from my  
18 counsel, I spoke with -- I'm sure I have spoken with  
19 Murray Anderson, but I can't recall other people  
20 outside B.A.T. Industries that I would have spoken  
21 to. I --

22 Q. What position does Murray Anderson hold?

23 A. He was the assistant secretary of  
24 British-American Tobacco Company, BATCO.

25 Q. Sir, how much time did you spend to prepare for

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1 this deposition?

2 A. In terms of hours, total hours, something in the  
3 reason of 30 hours I suppose, possibly less, possibly  
4 a bit more.

5 Q. Now where is B.A.T. Industries located?

6 A. B.A.T. Industries' head office, registered  
7 office, is in London, England.

8 Q. And the address?

9 A. Is Windsor House, 50 Victoria Street, London  
10 SW1.

11 Q. Now Windsor House, are there other businesses  
12 not related to B.A.T. Industries which are located at  
13 that address?

14 A. Other businesses not related to B.A.T.  
15 Industries? Oh, yes, there are, yes.

16 Q. All right. Does B.A.T. Industries have a floor  
17 or something in -- at that address?

18 A. B.A.T. Industries leases approximately 10 -- no,  
19 8 floors at Windsor House, floors 10 through 18.

20 Q. We're taking this deposition today in New York;  
21 right?

22 A. Yes.

23 MS. McGARRY: I'll just add pursuant to  
24 special agreement pertaining to this deposition and  
25 the Proctor deposition only.

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1 Q. Sir, during the preparation for your deposition,  
2 were you read any testimony that's been taken in this  
3 case?

4 A. Yes. In fact, you have brought back to my  
5 recollection the fact that I did read some testimony  
6 given in this case.

7 Q. Whose testimony did you read?

8 A. I read the testimony of the chief executive,  
9 Martin Broughton.

10 Q. And you read it yourself? No one read it to  
11 you?

12 A. No, I read it myself.

13 Q. All right. Anyone else's testimony that you  
14 read?

15 A. I don't believe I've read the testimony of  
16 anybody else in this case.

17 Q. Was anyone's testimony read to you?

18 A. I don't believe anyone's testimony was read to  
19 me.

20 Q. Did you look at any portions but not the whole  
21 of testimony from anyone else?

22 A. I don't believe so. I think I was shown a very  
23 small video recording clip of a question put to  
24 Mr. Gilbey in his deposition.

25 Q. And what question was that?

1 A. I really couldn't recall now.

2 Q. Was it just one question or was it a series of  
3 questions?

4 A. I think it was one, possibly two questions. It  
5 was just to show me what it is like.

6 MS. McGARRY: Just answer the question  
7 that's asked.

8 MS. WIVELL: Object to your -- your  
9 comments and -- and your coaching.  
10 Why don't we take a break.

11 THE REPORTER: Off the record, please.

12 (Recess taken.)

13 BY MS. WIVELL:

14 Q. Sir, it would be correct to say that B.A.T.  
15 Industries began its life in 1902 as British-American  
16 Tobacco Company, wouldn't it?

17 A. It would not be correct to say that.

18 (Discussion off the stenographic record.)

19 (Plaintiffs' Exhibit 621 was marked  
20 for identification.)

21 BY MS. WIVELL:

22 Q. Sir, let me ask the question again in a little  
23 bit different way.

24 Would it be fair to say that the B.A.T.  
25 Industries Group began its life in 1902 as

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1 British-American Tobacco Company?

2 A. No. What -- it would be fair to say that a --  
3 the company known as British-American Tobacco Company  
4 was incorporated in 1902 and that in 1976 the  
5 shareholders of British-American Tobacco Company  
6 replaced their shares with shares in a company called  
7 B.A.T. Industries P.L.C., a separate company.

8 Q. Sir, would you take a look at what has been  
9 marked as Plaintiffs' Exhibit --

10 THE REPORTER: 61 -- 621.

11 Q. -- 621. This is a document that begins with  
12 Bates number 105363439; correct?

13 A. Yes, it does.

14 Q. And this is a "STATEMENT ON B.A.T INDUSTRIES'  
15 TOBACCO INTERESTS IN DEVELOPING COUNTRIES"; right?

16 A. That's what it says.

17 Q. It was given by someone at the annual meeting on  
18 the 9th of June 1982; correct?

19 A. I do not know. It's what the document -- the  
20 document says on the front cover "Annual General  
21 Meeting, 9th" of "June 1982."

22 Q. All right. And it has the B.A.T. Industries  
23 P.L.C. logo at the top of the first page, doesn't it,  
24 sir?

25 A. It does.

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1 Q. Now, sir, B.A.T. Industries has an annual  
2 meeting every year, doesn't it?

3 A. It does.

4 Q. And that annual meeting is attended by  
5 shareholders of B.A.T. Industries; right?

6 A. It is, yes.

7 Q. That meeting's not open to the public, though,  
8 is it?

9 A. It is generally open to the shareholders, and  
10 members of the public may be invited in if they ask  
11 for special permission.

12 Q. All right. Now, from time to time statements  
13 are given to those annual meetings of the  
14 shareholders; right?

15 A. The -- can -- if I can just explain, the purpose  
16 of the general meeting is to transact certain  
17 business, and sometimes that will include a  
18 presentation by the chairman of the current trading  
19 prospects and a review of the previous year's  
20 performance.

21 Q. All right. Now if you take a look at the last  
22 page of this document, it has the Windsor House  
23 address on the last page, doesn't it?

24 A. Yes, it does.

25 Q. And that address is the address of B.A.T.

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1 Industries, isn't it, sir?

2 A. It is indeed.

3 Q. All right. Now, sir, when presentations are  
4 made at annual meetings to the shareholders, those  
5 presentations must be correct; right?

6 A. I can't imagine that a -- a -- a statement that  
7 was misleading would be -- that it would be the  
8 business of the company to make a statement that was  
9 misleading at a -- a general meeting on any -- any  
10 material matter that was relevant to a shareholder.

11 Q. All right. Well let me -- I'm not sure what  
12 your answer -- about your answer.

13 Are you saying it would be improper to make a  
14 misleading statement to the shareholders?

15 A. It would be improper intentionally to make a  
16 misleading statement to a shareholder which had  
17 any -- had any material consequences, yes. I  
18 don't --

19 Q. I --

20 MS. McGARRY: I don't think he finished.

21 Q. I'm looking at your answer and -- your previous  
22 answer, and you paused and said "that ... would be  
23 the business of the company to make a statement that  
24 was" mis -- "misleading at a ... general meeting ...  
25 any ... matter" -- "any material matter that was

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1 relevant to a shareholder." You weren't saying it  
2 was the business of the company to make misleading  
3 statements, were you?

4 MS. McGARRY: The actual answer says "I  
5 can't imagine that a ... statement" --

6 MS. WIVELL: And then there was a pause.

7 MS. McGARRY: -- "that was misleading  
8 would" --

9 MS. WIVELL: I'm just trying to clear it up  
10 because I -- I want to make sure that we're all of a  
11 mind here when we walk away from this.

12 MS. McGARRY: Okay. Please don't interrupt  
13 me in the future, Ms. Wivell.

14 BY MS. WIVELL:

15 Q. Sir, you are not suggesting it is the business  
16 of the company to make misleading statements to the  
17 shareholders, are you?

18 A. No, I'm not.

19 Q. I just wanted to make sure that we were all of a  
20 mind here.

21 And in fact, sir, it would be improper for  
22 anyone to make a misleading statement at the annual  
23 shareholders' meeting, wouldn't it, sir?

24 MS. McGARRY: Objection, asked and  
25 answered.

1 A. It would be improper for someone intentionally  
2 to make a misleading statement.

3 Q. All right. Would you turn to the second page of  
4 the document, which ends with the Bates number 440.

5 A. Yes.

6 Q. There it says "The B.A.T Industries Group began  
7 its life 80 years ago as British-American Tobacco  
8 Company"; correct?

9 A. That's what the document says.

10 Q. All right. And that's a fact, isn't it, sir?

11 A. It is not a fact, no.

12 Q. Was this a misleading statement made to the  
13 shareholders?

14 A. It is a mis --

15 It is a misstatement about the history of the  
16 B.A.T. Industries Group.

17 Q. Sir, isn't it a fact that the B.A.T. Industries  
18 Group did begin its life when British-American  
19 Tobacco Company was incorporated in 1902?

20 A. I think, as I said before, British-American  
21 Tobacco Company was incorporated in 1902. It was a  
22 company whose shares were publicly traded on the  
23 London Stock Exchange, and in 1976 an arrangement was  
24 sanctioned by the High Court of England whereby the  
25 public shareholders of British-American Tobacco

1 Company gave up their interests in that company and  
2 in return received shares in a company which became  
3 known as B.A.T. Industries, and British-American  
4 Tobacco Company at that time issued new shares to  
5 B.A.T. Industries and thereby became the subsidiary  
6 of B.A.T. Industries.

7 Q. Now, sir, do you know who actually made this  
8 statement that we've just been talking about that is  
9 the first line of Exhibit 621?

10 A. I do not know who made this statement.

11 Q. You attend annual shareholders' meetings, don't  
12 you, sir?

13 A. I attend annual shareholders' meetings.

14 Q. And typically the chief executive officer or  
15 chairman speaks to that meeting?

16 A. In my time as corporate secretary and in my time  
17 in the company, typically the chairman has made a  
18 presentation, and this year at the meeting in May  
19 this year the chief executive also made a  
20 presentation.

21 Q. Now --

22 A. That, I believe, is the first time it was done.

23 Q. -- in 19 -- excuse me, strike that.

24 Does anyone else, in your experience, ever speak  
25 to the shareholders at these annual meetings?

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1 A. If questions are made by the shareholders,  
2 questions are put by the shareholders to the board at  
3 the meeting, those questions will be answered  
4 normally by the chairman or the chief executive or  
5 occasionally by one of the other directors present at  
6 the meeting, and occasionally I have myself answered  
7 questions.

8 Q. But typically apart from questions, isn't it a  
9 fact that at shareholder meetings it is either the  
10 chair or the chief executive officer which -- who  
11 makes actual presentations to the shareholders?

12 A. I think it's fair to say that that would be  
13 typical.

14 Q. All right. Now in 1982 at the time of this  
15 meeting, Sir Patrick Sheehy was chair and CEO of  
16 B.A.T. Industries; correct?

17 A. I --

18 MS. McGARRY: Objection, misstates the  
19 prior testimony. You may answer.

20 A. I think I have given previous testimony that  
21 Sir Patrick Sheehy became chairman on the 1st of  
22 October 1982. I --

23 Q. All right. So at this time when --

24 MS. McGARRY: Had you finished your  
25 answer?

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1 THE WITNESS: I hadn't.

2 MS. WIVELL: Oh, I'm sorry.

3 A. I wanted also to say that while the document  
4 appears to be -- appears to contain a reference to  
5 the annual general meeting 9th June 1982, I have no  
6 knowledge of whether this document was read,  
7 presented or given to anybody at the annual -- annual  
8 general meeting. And I also want to make the point  
9 that I was not employed at B.A.T. Industries in  
10 1982. I had no connection with the company, and I  
11 have no knowledge directly or indirectly as to what  
12 took place at the meeting in 1982.

13 Q. Did you see this document during your  
14 preparation for your deposition, sir?

15 A. I don't think I did.

16 Q. So you just don't have any information one way  
17 or another to dispute that this was a statement made  
18 at an annual meeting of the shareholders in June of  
19 1982; right?

20 A. I have no way of disputing it or confirming it.

21 Q. And you have no reason to deny it, do you, sir?

22 A. I think I've already testified that I have no  
23 reason to deny -- deny it or confirm it.

24 Q. Now, sir, if this meeting took place on the date  
25 that's listed here, June 9th, 1982, Sir Peter Macadam

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1 would have been the chairman and CEO of B.A.T.  
2 Industries P.L.C.; correct?

3 MS. McGARRY: Object to the form of the  
4 question. You may answer.

5 A. I believe at that time Sir Peter Macadam, June  
6 1982, was the chairman of B.A.T. Industries.

7 Q. And it would be fair to assume, sir, wouldn't  
8 it, that this statement was made by Mr. Macadam at  
9 the shareholders' meeting?

10 MS. McGARRY: Objection, calls for  
11 speculation. You may answer.

12 A. I can't say whether it's fair to assume that or  
13 not. I simply don't know.

14 Q. Are there minutes kept of those shareholders'  
15 meetings?

16 A. Minutes are kept of shareholders' meetings.

17 Q. All right. Can you check with the minutes of  
18 the shareholders' meeting to determine whether or not  
19 this statement was actually given?

20 A. I can check the minutes of the shareholders'  
21 meeting to determine -- to see whether the minutes  
22 contain any reference to this --

23 Q. All right. And --

24 A. -- particular issue.

25 Q. -- would you let me know tomorrow?

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1 A. Yes.

2 THE WITNESS: Can we just go off the record  
3 for -- for a moment? I don't --

4 MS. McGARRY: If you need to speak to me,  
5 we can leave the room, but --

6 THE WITNESS: It was just to check that I  
7 don't need to --

8 MS. McGARRY: We don't go off the record.  
9 Only Ms. Wivell can direct the reporter to stop  
10 taking down what we're saying.

11 THE WITNESS: Okay. It was just to  
12 check --

13 MS. McGARRY: We'll discuss it at a break,  
14 thank you --

15 MS. WIVELL: All right.

16 MS. McGARRY: -- unless you need to speak  
17 to me immediately.

18 BY MS. WIVELL:

19 Q. Sir, the next statement that is given in  
20 Exhibit 621 is that "Since its formation in 1902, it  
21 has been an international tobacco company concerned  
22 with developing its" worldwide business; correct?

23 A. I think you've actually misread the sentence.  
24 The sentence reads "Since its formation in 1902, it  
25 has been an international tobacco company concerned

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1 with developing its business worldwide."

2 Q. All right, fine. And, sir, you understand that  
3 that refers to B.A.T. Industries Group; correct?

4 MS. McGARRY: Objection. You may answer.

5 A. I don't understand that to refer to the B.A.T.  
6 Industries Group.

7 Q. What do you believe it to refer to?

8 MS. McGARRY: Objection.

9 A. I can't express a belief. I didn't write these  
10 words. I do not know what was in the mind of the  
11 person who wrote them.

12 Q. All right.

13 A. I can only repeat the words which are there.

14 Q. And you have no reason to dispute what's written  
15 here, do you, sir?

16 MS. McGARRY: Objection, asked and  
17 answered.

18 A. I have previously testified to you that I think  
19 this is incorrect; the statement which is set forth  
20 here is not a correct statement.

21 Q. And you have never spoken with Mr. Macadam to  
22 find out whether or not he gave this statement, have  
23 you?

24 A. I have not.

25 MS. WIVELL: Mr. LaBorde, could you get out

1 Exhibit 281.

2 (Plaintiffs' Exhibit 281 was handed  
3 to the witness.)

4 BY MS. WIVELL:

5 Q. Sir, showing --

6 MS. McGARRY: I'm sorry, do we have an  
7 extra of this?

8 MS. WIVELL: Yeah, right here.

9 MS. McGARRY: Oh, sorry.

10 Q. Sir, showing you what has previously been marked  
11 as Plaintiffs' Exhibit 281, you're familiar with this  
12 document, aren't you?

13 A. Yes, I am.

14 Q. And this is the proxy information on the event  
15 which you referred to earlier which took place in  
16 1976; correct?

17 A. This is a circular to the shareholders of  
18 British-American Tobacco Company Limited, BATCO, and  
19 to the shareholders of Tobacco Securities Trust  
20 Company Limited explaining a proposal by the  
21 respective boards of those companies for a -- an  
22 arrangement whereby Tobacco Securities Trust Company  
23 Limited would change its name to B.A.T. Industries  
24 Limited and become the holding company of  
25 British-American Tobacco Company Limited, BATCO.

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1 Q. And this document is the information that was  
2 sent out concerning the event which you referred to  
3 earlier in your testimony that took place in 1976;  
4 right?

5 A. Yes.

6 Q. And that event was what you were referring to  
7 when you talked about the approval by the court?

8 A. Yes, I believe.

9 Q. All right. Now, sir, as a lawyer, you are  
10 aware, aren't you, that the statements that are made  
11 in the document which has been marked Exhibit 281  
12 must be accurate? Correct?

13 MS. McGARRY: Objection. That calls for a  
14 legal conclusion. It's also unclear whether you're  
15 speaking under English or American law, but I will  
16 permit the witness to answer.

17 A. It would not be expected --

18 Companies circulating documents to their  
19 shareholders would be expected not to prepare those  
20 documents so as to contain information which was  
21 knowingly untrue.

22 Q. And if information which was circulated to  
23 shareholders contained statements which were  
24 knowingly false, there could be under English law  
25 legal sanctions for doing so; correct?

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1 MS. McGARRY: Objection. You may answer.

2 A. Can you clarify for me whether you're talking  
3 about the position now or the position as it may have  
4 been in 1976?

5 Q. All right. Let's talk about 1976. You  
6 understand that the statements that were made at the  
7 time this document was put together in 1976 had to be  
8 true; right?

9 MS. McGARRY: Same objection. You may  
10 answer.

11 A. I understand that the statements that were  
12 contained in this document -- and I say taking the  
13 document as a whole -- would have to be true, yes.

14 Q. All right. Now you mentioned that this was a --  
15 strike that.

16 The event that we're talking about here is a  
17 reverse takeover, isn't it?

18 A. That colloquially would be known as a reverse  
19 takeover, yes.

20 Q. All right. What do you understand a reverse  
21 takeover to be?

22 A. This would be where a company having a -- a  
23 company which is -- has a -- in which another company  
24 has an interest takes over the company having the  
25 interest in that company.

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1 Q. All right. Would it be fair to say that the  
2 company which emerged after the event -- no, strike  
3 that.

4 This reverse takeover actually occurred, didn't  
5 it?

6 A. B.A.T. Industries acquired the shares of  
7 British-American Tobacco Company.

8 Q. All right. Well isn't it true that TST acquired  
9 the shares and then changed its name to B.A.T.  
10 Industries P.L.C.?

11 A. I believe the change of name from TST, Tobacco  
12 Securities Trust Company Limited, to B.A.T.  
13 Industries was almost simultaneous with the -- with  
14 the transaction taking effect.

15 Q. Well wasn't there a company already in existence  
16 called B.A.T. Industries P.L.C. before 1976?

17 A. Not to my knowledge, no.

18 Q. Okay. Do you recall Mr. Broughton testifying as  
19 to the incorporation date of B.A.T. Industries  
20 P.L.C.?

21 A. I think I recall him testifying, yes.

22 Q. And what do you understand the incorporation  
23 date of B.A.T. Industries P.L.C. to be?

24 A. 1928.

25 Q. All right. Well if B.A.T. Industries P.L.C. was

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1 incorporated in 1928, how could TST change its name  
2 in 1976 to B.A.T. Industries P.L.C.?

3 A. Because B.A.T. Industries, which changed its  
4 name to B.A.T. Industries in 1976, was formerly known  
5 as Tobacco Securities Trust Company, the name in  
6 which it was incorporated in 1928, the name which it  
7 held until 1976 when it changed its name to B.A.T.  
8 Industries.

9 Q. Let me understand. Was the company that was  
10 formed in 1928 named B.A.T. Industries P.L.C.?

11 A. In 1928 the company was formed as Tobacco  
12 Securities Trust Company Limited.

13 Q. And so in reality, the company which is now  
14 named B.A.T. Industries P.L.C. was first named that  
15 in 1976 after or simultaneous with the transaction  
16 which is described in Exhibit 281?

17 A. Yes.

18 Q. All right. And B.A.T. Industries P.L.C. has  
19 been in existence since; correct?

20 A. Yes. Yes.

21 Q. Now when B.A.T. Industries -- I'm sorry, strike  
22 that.

23 Before this transaction in 1976,  
24 British-American Tobacco Company had purchased  
25 Brown & Williamson; right?

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- 1 A. Yes.
- 2 Q. And that transaction or that purchase occurred
- 3 in 1928? I'm sorry, strike that.
- 4 That transaction occurred in 1927; right?
- 5 A. I believe that to be the case.
- 6 Q. All right. In fact, it says so on the page that
- 7 is Bates numbered 394 of Exhibit 281; correct?
- 8 A. Yes, it says that.
- 9 Q. Now when B.A.T. Industries or --
- 10 When the company changed its name to B.A.T.
- 11 Industries at the time of this event in 1976, did
- 12 B.A.T. Industries buy Brown & Williamson?
- 13 A. I'm sorry, can you repeat the question?
- 14 Q. Certainly. Let me see if I can make it a little
- 15 simpler.
- 16 In 1976 did B.A.T. Industries buy Brown &
- 17 Williamson?
- 18 A. In 1976 B.A.T. became the ultimate parent
- 19 company of Brown & Williamson, but it did not buy the
- 20 shares in Brown & Williamson.
- 21 Q. All right. Were the shares transferred to it
- 22 from British-American Tobacco Company?
- 23 A. No.
- 24 Q. How did B.A.T. Industries become the parent
- 25 company ultimately of Brown & Williamson in 1976?



1 A. Well B.A.T. Industries was the holding company  
2 of all the companies in the B.A.T. Industries Group  
3 from 1976 onwards, and one of those companies was  
4 Brown & Williamson.

5 Q. And it is true that since 1976 B.A.T. Industries  
6 has continued to be the parent company of Brown &  
7 Williamson?

8 A. It is true that nine -- since 1976 B.A.T.  
9 Industries has continued to be the ultimate parent  
10 company of Brown & Williamson.

11 MS. WIVELL: Mr. LaBorde, could you show  
12 the witness Exhibit 285.

13 (Plaintiffs' Exhibit 285 was handed  
14 to the witness.)

15 MS. McGARRY: Thank you.

16 BY MS. WIVELL:

17 Q. Sir, showing you what's been marked as  
18 Exhibit 285, this is a -- a group information  
19 circular entitled "FORMATION OF B.A.T INDUSTRIES  
20 LIMITED"; correct?

21 A. It is headed -- it has that heading on the  
22 document.

23 Q. All right. If we turn to the second page of --  
24 I'm sorry, strike that.

25 This document sets out the board of B.A.T.

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1 Industries as of 1976; correct?

2 A. Yes, it says "The Board of B.A.T Industries has  
3 been reconstituted so that it now consists of" and  
4 gives a list of directors.

5 Q. And it lists the Chairman's Policy Committee?

6 A. Yes, it does.

7 Q. And that's the committee we were discussing  
8 earlier; right?

9 A. Yes, it is.

10 Q. And on that committee at the time was Mr. P. D.  
11 Tindley?

12 A. According to this document, yes.

13 Q. And Patrick Sheehy?

14 A. Yes.

15 Q. And E. J. Symons; right?

16 A. The document says so.

17 Q. Well, sir, do you understand that that was the  
18 makeup of the Chairman's Policy Committee in 1976?

19 A. I don't have a specific recollection of that,  
20 but I -- yeah.

21 Q. You have no information to refute this  
22 document?

23 A. I have no information to refute the membership  
24 of the Chairman's Policy Committee as stated here in  
25 this document.

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- 1 Q. All right. And the Chairman's Policy Committee,  
2 all of the members were members of the board of  
3 B.A.T. Industries?
- 4 A. I think that would be the case, yes.
- 5 Q. And that has always been the case, hasn't it,  
6 sir?
- 7 A. To my knowledge, it has always been the case.
- 8 Q. And then also listed are other directors who --  
9 and they were members of the B.A.T. Industries  
10 board?
- 11 A. Yes.
- 12 Q. Now, if we turn to the second page of the  
13 document, there is reference to the phrase "B.A.T  
14 Group" or "B.A.T Group"; correct?
- 15 A. Yes, there is.
- 16 Q. And it says that will be used as the proffer --  
17 proper reference to the group of companies comprising  
18 B.A.T. Industries and its subsidiary and associated  
19 companies; right?
- 20 A. That's what the document says, yes.
- 21 Q. All right. And you have no reason to dispute  
22 what's said here, do you, sir?
- 23 A. You've just quoted from the document and I've  
24 confirmed that's what the document says.
- 25 Q. All right. But you have no reason to believe

1 that that is an incorrect statement in the document;  
2 right?

3 MS. McGARRY: Objection.

4 A. I -- I simply don't know. It's what the  
5 document says.

6 Q. Well I -- sir, let me ask it a little bit  
7 differently.

8 Today when people within B.A.T. Industries talk  
9 about the B.A.T. Group or the B.A.T. Group, that  
10 means B.A.T. Industries and its associated companies,  
11 doesn't it?

12 A. It is a collective phrase which is normally used  
13 to describe B.A.T. Industries and the collection of  
14 companies that are its subsidiaries.

15 Q. All right. And that collective phrase has been  
16 used con -- consistently since 1976?

17 A. I didn't join the company until 1990 so I really  
18 can't speak about the position before 1990, but I  
19 think it's consistent from -- certainly from my time  
20 in the company.

21 Q. And as a matter of fact, the next sentence goes  
22 on to refer to the B.A.T. housemark; right?

23 A. Yes, it -- it refers to the B.A.T. housemark.

24 Q. Now what is the B.A.T. housemark?

25 A. I think I have to refer back to the first page,

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1 which the document does, "The B.A.T housemark, used  
2 on the letterhead of this circular," which --

3 Q. That refers to the logo at the top of the page,  
4 doesn't it?

5 A. I -- I simply don't know.

6 Q. All right. You understand, however, that  
7 members of the B.A.T. Group are allowed, if they  
8 choose, to put on their stationery the fact that they  
9 are a B.A. -- a member of the B.A.T. Industries  
10 Group?

11 A. They are permitted to do so. It's not a  
12 requirement.

13 Q. But they may do so if they choose?

14 A. They may do so if they choose.

15 Q. Now, sir, it goes on in -- at the last paragraph  
16 to talk about the abbreviation for British-American  
17 Tobacco Company Limited. Now British-American  
18 Tobacco Company Limited did not go out of business in  
19 1976, did it?

20 A. British-American Tobacco did not go out of  
21 business in 1976, no.

22 Q. All right. Now there are some abbreviations  
23 given there. Have you ever seen those actually  
24 used?

25 A. Sorry, can you be specific about which

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1 abbreviations you're referring to.

2 Q. Well "BAT Co.Ltd.," have you ever seen that  
3 actually used as an abbreviation for British-American  
4 Tobacco Company Limited?

5 A. It is very common to see the expression  
6 "BATCO."

7 Q. Instead of what's listed here; right?

8 A. I said it's common. I don't think it's  
9 exclusive, but I've -- certainly the expression  
10 "BATCO" is a common expression used to refer to  
11 British-American Tobacco Company Limited.

12 Q. All right. And that's what I was going to ask  
13 you next. That is the more common abbreviation for  
14 British-American Tobacco Company Limited, right,  
15 "BATCO"?

16 A. I think that's fair, yes.

17 Q. Sir, B.A.T. Industries views itself as a  
18 worldwide business, doesn't it?

19 A. B.A.T. Industries views itself as a holding  
20 company owning a number of companies which are in  
21 business, and its businesses have a wide  
22 geographical -- those businesses have a wide  
23 geographical spread.

24 Q. Well would it be incorrect to say that the home  
25 of British-American -- I'm sorry, strike that.

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1           Would it be incorrect to say that the home of  
2 B.A.T. Industries is the world?  
3 A.    I don't think I really understand the question.  
4 Q.    Well, let's do it this way.  
5           (Plaintiffs' Exhibit 622 was marked  
6           for identification.)  
7 BY MS. WIVELL:  
8 Q.    Sir, showing you what's been marked as  
9 Plaintiffs' Exhibit 622, this is a document which is  
10 Bates numbered 100506546; correct?  
11 A.    Correct.  
12 Q.    And at the top it says "B.A.T INDUSTRIES  
13 LIMITED, THE FUTURE OF US/UK BUSINESS RELATIONS";  
14 right?  
15 A.    That's what it says.  
16 Q.    And this is a speech delivered by Mr. Peter  
17 Macadam, Chairman, B.A.T. Industries Limited, to the  
18 American Chamber of Commerce, London, September 17th,  
19 1980; right?  
20 A.    That's what the text says on the document, yes.  
21 Q.    Have you ever seen this document before, sir?  
22 A.    I have seen this document before.  
23 Q.    You've read it?  
24 A.    I have looked at it. I wouldn't say I've read  
25 it in any great detail.

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1 Q. You've never spoken with Mr. Macadam about what  
2 he said in this presentation, have you?

3 A. I have not.

4 Q. Sir, if we look at what Mr. Macadam says, he  
5 talks about at the beginning being someone who has  
6 spent all of his life working with the  
7 British-American Tobacco Company and now more  
8 recently with B.A.T. Industries; right?

9 A. If you're going to ask me questions on this,  
10 could I take time out to -- to actually read the  
11 document, please?

12 Q. Do you feel you need to read the whole  
13 document?

14 MS. McGARRY: If the witness wants to read  
15 the whole document, he's certainly welcome to read  
16 the document, Ms. Wivell, if you're going to ask him  
17 questions about something.

18 Q. Well, sir, you've seen this document before;  
19 correct?

20 MS. McGARRY: Objection, asked and  
21 answered.

22 A. I have seen the document before.

23 Q. All right. And you understand that this is a  
24 presentation which Mr. Macadam gave as chair of  
25 B.A.T. Industries Limited; right?



1 MS. McGARRY: Since you're asking him  
2 questions about this document, Mr. Wilson will  
3 exercise his right to read the document before we go  
4 any further.

5 A. I'm sorry, can you repeat the --

6 MS. McGARRY: No. You're going to have  
7 your opportunity to read the document since she's  
8 asking you about it.

9 Q. All right. Read the document.

10 (Witness reviews Plaintiffs' Exhibit 622.)

11 Q. Sir, you've had the opportunity to read the  
12 document; right?

13 A. Yes.

14 Q. Now, Mr. Macadam told -- first of all, strike  
15 that.

16 It would be important for Mr. Macadam to make  
17 accurate statements to the American Chamber of  
18 Commerce when he gave this speech, wouldn't it, sir?

19 A. I would not expect Mr. Macadam to make  
20 statements which he knew to be inaccurate.

21 Q. And Mr. Macadam told the people at this speech  
22 that home for his company was neither the United  
23 Kingdom nor the United States of America; it has to  
24 be the world. Right?

25 MS. McGARRY: Objection.

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1 A. The words of the document say "I do not say I  
2 feel 'at home'" -- quotes, "'at home,'" close quotes,  
3 "because home for my Company is neither the United  
4 Kingdom nor the United States of America;" -- I think  
5 that's a semicolon -- "it has to be the world," stop,  
6 close quote.

7 Q. Mr. Macadam also told the audience what his  
8 company's largest area of operations at that time  
9 was; right?

10 MS. McGARRY: Objection, assumes facts not  
11 in evidence. You may answer.

12 A. The document says "... and our largest area of  
13 operation today is the USA."

14 Q. And he was speaking as chairman of B.A.T.  
15 Industries Limited, wasn't he, sir?

16 MS. McGARRY: Objection, assumes facts not  
17 in evidence. You may answer.

18 A. The document is described as a speech delivered  
19 by Mr. Peter Macadam, Chairman, B.A.T. Industries  
20 Limited.

21 Q. He went on to say that -- to describe B.A.T.  
22 Industries as Britain's third-largest company;  
23 right?

24 A. Yes.

25 MS. McGARRY: Objection. Go ahead.

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1 Q. And at the time it was Britain's third-largest  
2 company, wasn't it, sir?

3 A. Can I just -- I think I'd better just take some  
4 time to explain what is meant -- what I believe is  
5 meant in this context by "third largest Company."

6 B.A.T. Industries, as I've mentioned before, is  
7 a holding company. It is a company which owns a  
8 number of subsidiaries that operate in various  
9 businesses. At the time this document was written,  
10 the company was -- the com -- the company's  
11 subsidiaries operated in a number of different  
12 business streams: tobacco, paper, packaging, retail,  
13 so on and so forth, and subsequently came on to make  
14 investments in the financial services business.

15 In determining the size of a company, when there  
16 is a reference to the size of a company, if it is  
17 a -- a publicly quoted company, as B.A.T. Industries  
18 was, it is a reference to the market value of the  
19 company on the stock market. In other words, it is  
20 an -- a value -- it is to look to the value of the --  
21 the total value of all the issued shares in the  
22 company which are held by members of the public,  
23 traded on the Stock Exchange.

24 Q. And at the time this speech was given, that  
25 publicly traded value placed B.A.T. Industries third

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1 amongst British companies; right?

2 A. I do not know. The document -- the document  
3 implies that. I do not know.

4 Q. Well, sir, the document also says that B.A.T.  
5 Industries employs 280,000 people in six continents  
6 and in 1979 our -- I'm sorry, strike that.

7 The document also says that B.A.T. Industries  
8 employs 280,000 people in six continents; correct?

9 MS. McGARRY: Objection, misquotes the  
10 document.

11 A. The -- the document says, quote, "We employ  
12 280,000 people in six continents ...."

13 Q. And then it goes on to say "... in 1979 our  
14 operating profit was 525 million pounds, on a world  
15 turnover of 7,228 million pounds ..."; correct?

16 A. The document says that.

17 Q. And it goes on to say "... which in US dollars  
18 is over 17 billion"; right?

19 A. That's what the document says.

20 Q. You have no information which refutes those  
21 statements, do you, sir?

22 A. I have no information which refutes those  
23 statements.

24 Q. And Mr. Macadam went on to say, quote, "We  
25 manufacture in 78 different countries and we are the

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1 world's largest private enterprise tobacco  
2 manufacturer by quite a margin"; correct?

3 MS. McGARRY: Objection, assumes facts not  
4 in evidence. You may answer.

5 A. The document says "We manufacture in 78  
6 different countries and we are the world's largest  
7 private enterprise tobacco manufacturer by quite a  
8 margin."

9 Q. All right. And you have no information to  
10 refute that statement, do you, sir?

11 A. I think the -- if I may answer that question, I  
12 think the answer to that really appears in the  
13 document itself. You've quoted from a paragraph, but  
14 if one takes the document in the round, one sees  
15 something of a -- a different picture.

16 If you look at the last two paragraphs on the  
17 page on -- it says, and if I may quote this, "From  
18 our inception, we have pursued a policy of delegated  
19 authority within certain operating limits and  
20 perhaps" that "is what distinguishes many British  
21 from many American multinationals where there is, in  
22 my experience, a tendency to centralise control. It  
23 is pretty clear to me that it would be almost  
24 impossible to try and run, from the centre, on a  
25 day-to-day basis, a Company of the size and

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1 complexity of B.A.T Industries. As a consequence, we  
2 have developed a strong sense of devolution - in many  
3 ways reflecting the traditions of British colonial  
4 power."

5 It goes on to say "In practice, this means that  
6 we operate within a concept of federal  
7 decentralization. There is full delegation of  
8 authority by the main Board of B.A.T Industries to  
9 the Operating Groups and from them to the lower  
10 levels. In effect, the chief executive of an  
11 operating subsidiary has a wide measure of freedom.  
12 Among the things that he may not do without the  
13 agreement of higher authority are to change the  
14 business his Company is in, make capital expenditure  
15 above certain limits, alter the most senior  
16 appointments in his Company or work outside the  
17 bounds of the Group's operating philosophy."

18 And if I may just skip ahead to the next  
19 paragraph, it says "We have six Operating Groups -  
20 other Companies would describe them as Divisions.  
21 Five of them relate to our diversified industries on  
22 a worldwide basis and the sixth, BATUS Inc., formed  
23 this year, has a territorial base - the United  
24 States, encompassing all our interests there."

25 And just skipping on one more paragraph, it goes

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1 on "The keystone of BATUS is Brown and Williamson  
2 Tobacco Corporation, the third largest American  
3 tobacco Company and maker of such brands as," and it  
4 quotes a number of brands.

5 The point behind this is that the operations,  
6 the businesses, that the group is an investor in are  
7 conducted by the operating companies, not by B.A.T.  
8 Industries.

9 THE REPORTER: Off the record, please, to  
10 change tape.

11 (Discussion off the record.)

12 MS. WIVELL: Move to strike as  
13 nonresponsive.

14 BY MS. WIVELL:

15 Q. Sir, my question referred to the -- the sentence  
16 "We manufacture in 78 different countries and we are  
17 the world's largest private enterprise tobacco  
18 manufacturer by quite a margin." Sir, you have no  
19 information to refute that statement, do you?

20 A. I'm sorry if you thought my last answer was  
21 nonresponsive because I think that was the answer --  
22 that that is the -- what I previously quoted to you  
23 explains really what that sentence means, and I can't  
24 add anything to what I've previously said.

25 Q. Well you never spoke with Mr. Macadam about that

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1 sentence, have you?

2 A. I have not spoken to Mr. Macadam about that  
3 sentence.

4 Q. All right. And you weren't present at this  
5 presentation, were you, sir?

6 MS. McGARRY: Objection, assumes facts not  
7 in evidence.

8 A. I don't know the presentation took place.

9 Q. Well, sir, you don't know --

10 A. I'm sorry. I wasn't at a presentation in -- at  
11 any presentation given to the American Chamber of  
12 Commerce in -- in London in September -- on September  
13 the 17th, 1980.

14 Q. You have no information that leads you to  
15 believe that this presentation wasn't given as  
16 written on the document; right?

17 A. I have no information to confirm or deny that.

18 Q. All right. Now, sir, in the -- later in that  
19 paragraph, Mr. Macadam refers to B.A.T.; right?

20 A. There is a reference to B.A.T., yes.

21 Q. All right. And he is using that shorthand for  
22 B.A.T. Industries P.L.C.; right?

23 MS. McGARRY: Objection.

24 A. I --

25 MS. McGARRY: Calls for the witness to



1 speculate. You may answer.

2 A. I simply don't know what he's -- basis he's  
3 using it for. It's what it says. I don't know what  
4 was in his mind when he wrote it.

5 Q. Well he says "... and BAT distinguishes itself  
6 from the world" growth average "rate of 2.5 per cent  
7 by growing at a point or two above this"; right?

8 MS. McGARRY: "World average growth rate."

9 A. As -- as corrected by my counsel, yes.

10 Q. All right. And that is in the same paragraph  
11 when he was talking about B.A.T. Industries being  
12 Britain's third-largest company; right?

13 A. It is in the same paragraph.

14 Q. Now later in the speech Mr. Macadam goes on to  
15 talk about the decentralized method of running the  
16 B.A.T. Company; right?

17 MS. McGARRY: Objection.

18 A. He talks about the delegation of authority from  
19 B.A.T. Industries to its operating groups.

20 Q. And he refers to the fact that that  
21 decentralization took place because of the difficulty  
22 it would take in running a company of the size and  
23 complexity of B.A.T. Industries on a day-to-day  
24 basis, doesn't he, sir?

25 MS. McGARRY: Objection. You may answer.

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1 A. The words say "It is pretty clear to me that it  
2 would be almost impossible to try and run, from the  
3 centre, on a day-to-day basis, a Company of the size  
4 and complexity of B.A.T Industries."

5 Q. You agree with that, sir, don't you?

6 A. I'm not sure that I agree with that. The -- it  
7 is possible to run B.A.T. Industries P.L.C. from  
8 Windsor House. It is clearly not possible for the  
9 people who are employed by B.A.T. Industries to run  
10 the various operating subsidiaries on a day-to-day  
11 basis.

12 Q. Well you would agree that B.A.T. Industries is a  
13 large and complex organization?

14 A. I would regard the group of companies owned by  
15 B.A.T. Industries as -- as a large and complex, yeah,  
16 group.

17 Q. And as a matter of fact, Mr. Macadam talked  
18 about a scheme of management that he says large --  
19 reflects the tradition of the British colonial  
20 powers; right?

21 MS. McGARRY: Objection, assumes facts not  
22 in evidence. You may answer.

23 A. The words say "... we have developed a strong  
24 sense of devolution - in many ways reflecting the  
25 traditions of British colonial power."

1 Q. All right. And you understand that what he's  
2 referring to is the tradition of the British empire;  
3 right?

4 MS. McGARRY: Objection.

5 A. I understand nothing --

6 I understand nothing at all by that. I -- I  
7 don't know what was in his mind when he wrote that.  
8 I simply can't tell you.

9 Q. Well as you sit here today, you read that  
10 sentence to refer to the British empire, don't you?

11 MS. McGARRY: Objection.

12 A. I read that sentence to refer to British  
13 colonial power.

14 Q. Well what do you understand that to be?

15 MS. McGARRY: Objection.

16 A. What do I understand it to be or what do --

17 Q. Well just --

18 A. I can't -- I can't speculate as to what  
19 Mr. Macadam had in mind when he wrote those words,  
20 assuming he wrote those words. I don't know.

21 Q. Well the words say "As a consequence, we have  
22 developed a strong sense of devolution - in many ways  
23 reflecting the traditions of British colonial power";  
24 right?

25 A. That's what the words say, yes.

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1 Q. All right. And what do you understand them to  
2 mean as secretary of B.A.T. Industries P.L.C. as you  
3 sit here today?

4 A. Well I'm clearly speculating. There appears to  
5 be an analogy here with the way in which the Britain  
6 government has colonies. That's essentially what the  
7 words are saying.

8 Q. All right. And as a matter of fact, that is  
9 very much the way that B.A.T. Industries is set up,  
10 isn't it, sir?

11 MS. McGARRY: Objection.

12 A. I don't --

13 I'm not experienced in British empire or British  
14 colonial power matters. I can't really talk about  
15 the technicalities of those matters, so I can't draw  
16 a comparison between the way the B.A.T. Industries  
17 and its operating companies function with the way  
18 Britain ruled its empire 50 years ago.

19 Q. All right. Well you understand that the United  
20 States was originally a British colony; correct?

21 MS. McGARRY: Objection. We're getting a  
22 little far afield with the subject matter of this  
23 noticed deposition.

24 A. Yes, I think I have a rec -- recollection of  
25 that, yes.

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1 Q. All right. And you understand that the U.S.  
2 eventually had a revolution and is now independent;  
3 right?

4 A. I understand that, yes.

5 Q. All right. And you understand that Brown &  
6 Williamson is analogous to those original 13 colonies  
7 at -- which were part of the British empire; right?

8 MS. McGARRY: Objection.

9 A. I'm -- I really don't understand the question.  
10 I'm -- I'm -- I don't -- I don't see an analogy  
11 between Brown & Williamson and the original 13  
12 colonies, but I don't understand enough about the  
13 history to be able to -- perhaps to -- to understand  
14 your question anyway.

15 Q. Well Brown & Williamson has never declared their  
16 independence, have they, sir, from --

17 MS. McGARRY: Objection.

18 Q. -- B.A.T. Industries?

19 A. Can you clarify what you mean by declared  
20 independence?

21 Q. Well, sir, the -- the plain and simple fact of  
22 the matter is that Brown & Williamson is a  
23 wholly-owned subsidiary to this day of B.A.T.  
24 Industries P.L.C.; right?

25 A. The fact is that Brown & Williamson is a

1 wholly-owned -- indirect wholly-owned subsidiary of  
2 B.A.T. Industries, yes.

3 Q. And Brown & Williamson cannot overthrow its  
4 parent and go marching off without direction from its  
5 parent company, can it?

6 MS. McGARRY: Objection.

7 A. I -- I suspect that matter is a legal matter and  
8 you're asking me to draw legal conclusions, and since  
9 I'm not a U.S. attorney, I don't imagine I can  
10 possibly draw --

11 Q. But you are an English attorney, aren't you,  
12 sir?

13 A. I am a solicitor of the Supreme Court of England  
14 and Wales, yes.

15 Q. And you understand that under the English law  
16 Brown & Williamson cannot declare its independence  
17 like the United States; it must remain a colony,  
18 using Mr. Macadam's analogy?

19 MS. McGARRY: Objection. The question is  
20 ambiguous.

21 A. I'm not -- sorry, can you repeat -- repeat the  
22 question.

23 Q. Certainly. And you understand that under  
24 English law Brown & Williamson cannot declare its  
25 independence like the United States did, but it must

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1 remain a colony under B.A.T. Industries P.L.C.;  
2 right?

3 MS. McGARRY: Objection.

4 A. I -- I'm -- again I ask you please for some  
5 clarification on what you mean by declaring its  
6 independence.

7 Q. Well right now the United States does not have  
8 to send money back to the United Kingdom, does it?

9 A. I imagine that to be correct.

10 Q. Brown & Williamson must send profits back to  
11 B.A.T. Industries P.L.C.; correct?

12 A. No, not correct at all.

13 MS. McGARRY: You answered the question.

14 Q. There was a time between 1990 and 1996 when  
15 B.A.T. Industries sent profits directly back to --  
16 I'm sorry, strike that.

17 There was a time between 1990 and 1996 when  
18 Brown & Williamson sent profits directly back to  
19 B.A.T. Industries; isn't that true, sir?

20 A. I believe that's not true.

21 Q. You don't believe that's true at all; is that  
22 right?

23 MS. McGARRY: Asked and answered. You may  
24 answer again.

25 A. I believe it's not true that Brown & Williamson

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1 sent profits back to B.A.T. Industries.

2 Q. It sends profits up through the chain of command  
3 ultimately to the parent, B.A.T. Industries;  
4 correct?

5 A. Can -- I'm sorry, can you -- I don't understand  
6 "chain of command," what you mean by --

7 Q. The reporting chain.

8 A. Brown & Williamson does not send profits to  
9 B.A.T. Industries through a chain of command.

10 Q. It doesn't ever send money that eventually  
11 reaches B.A.T. Industries?

12 A. If I can --

13 Brown & Williamson earns profits from the  
14 business it's in, which is the manufacture and  
15 distribution of cigarettes, and when Brown &  
16 Williamson has deducted from its revenues its  
17 expenditure, it will discover what its profits are,  
18 and out of those profits it may declare a dividend.  
19 And if it declares a dividend, it may -- it will pay  
20 that dividend to its parent company. And its parent  
21 company, looking at its own income, which will  
22 include dividends received from its subsidiary, may  
23 also decide at some stage to pay a dividend to its  
24 parent company.

25 Q. Getting back to our analogy --

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1 MS. McGARRY: Are you done?

2 THE WITNESS: I -- I think so, yes.

3 MS. McGARRY: Okay.

4 Q. Getting back to the analogy of the British  
5 colonial power here, the United States does not have  
6 to report to the United Kingdom today, does it?

7 A. I believe that to be the case.

8 Q. Brown & Williamson does have to report to --  
9 ultimately to its parent company, doesn't it?

10 A. We discussed earlier the delegated authority  
11 statement, and the delegated authority statement sets  
12 out terms of reference for matters which require  
13 review by the shareholder. B.A.T. Industries, as  
14 I've described, is the holding company holding  
15 investments in numerous subsidiary companies  
16 operating in either tobacco or financial services,  
17 and the delegated authority sets out the framework of  
18 matters of major generally strategic importance which  
19 require a reference to the Chief Executive's  
20 Committee and, in some circumstances, the board  
21 before an operating company may implement a  
22 decision.

23 And if you're referring to that process by which  
24 Brown & Williamson reports to B.A.T. Industries, then  
25 I don't dispute that.

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1 Q. And the delegated authority comes from the board  
2 of B.A.T. Industries; right?

3 A. The delegated authority is issued by the board  
4 of B.A.T. Industries.

5 Q. It's not issued by the board of Brown &  
6 Williamson, is it, sir?

7 A. It is not issued by the board of Brown &  
8 Williamson.

9 Q. That's because the authority comes from the  
10 board of B.A.T. Industries, doesn't it?

11 A. It -- the delegated authority is issued by the  
12 board of B.A.T. Industries.

13 Q. Yes.

14 A. And the delegated authority, if I may quote from  
15 the delegated authority, says "The B.A.T Industries  
16 Group has evolved an organisation which encourages  
17 the exercise of a high degree of autonomy within the  
18 framework approved by the Board. Thus, the freedom  
19 and responsibilities in operations reside in  
20 Operating Groups," parentheses, "(the companies shown  
21 in 3(b) below) ...." And if one refers to 3(b)  
22 below, you see amongst the operating groups described  
23 is Brown & Williamson.

24 Q. I --

25 A. The delegated authority then goes on to say

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1 "... except in" -- "in respect of matters which  
2 affect B.A.T Industries' interest as a shareholder in  
3 Operating Groups, which should be referred to the  
4 Chief Executive's Committee ... and/or the Main  
5 Board," which is a reference to the board of B.A.T.  
6 Industries.

7 Q. But just so we're clear --

8 A. Can I -- I'm sorry, may I just finish my  
9 answer?

10 Q. Oh, I'm sorry.

11 A. "The levels of reference are set so that matters  
12 of the greatest importance are referred to the Main  
13 Board; other matters are referred to the CEC or  
14 Operating Group as shown below."

15 Q. And by "the Main Board," you mean the board of  
16 B.A.T. Industries P.L.C.?

17 A. The board of B.A.T. Industries P.L.C., yes.

18 Q. And when you're referring to "the CEC," you're  
19 referring to the Chief Executive Committee of B.A.T.  
20 Industries P.L.C.; right?

21 A. I'm referring to the Chief Executive Committee  
22 established under the terms of the delegated  
23 authority.

24 Q. And going back to our colonial power analogy,  
25 the United States chose not to report to the king and

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1 staged a revolution and declared their independence;  
2 right?

3 A. Right.

4 MS. McGARRY: Objection. It's your  
5 analogy, not our analogy.

6 MS. WIVELL: Oh, no, it's Mr. Macadam's  
7 analogy actually, so let me rephrase the question.

8 Q. And going back to Mr. Macadam's analogy in  
9 Exhibit 622, the United States chose not to report to  
10 the king and staged a revolution declaring their  
11 independence; right?

12 MS. McGARRY: Objection.

13 A. I'm sorry, could you -- could you repeat the --  
14 the question.

15 Q. Certainly. In going back to Mr. Macadam's  
16 analogy as set forth in Exhibit 622, the United  
17 States chose not to report to the king and staged a  
18 revolution declaring their independence; right?

19 MS. McGARRY: Objection.

20 A. The -- what the document actually refers to  
21 is -- I believe this is the point you're making --  
22 "As a consequence, we have developed" -- "developed  
23 a strong sense of devolution - in many ways  
24 reflecting the traditions of British colonial  
25 power." I may have missed it, but if you can refer

1 me to the reference to America --

2 Q. Well let's put --

3 A. -- deciding --

4 Q. -- it this way, sir: Brown & Williamson cannot  
5 overthrow the board and declare its independence --  
6 I'm sorry, strike that.

7 Brown & Williamson cannot overthrow the board of  
8 B.A.T. Industries P.L.C. and declare its independence  
9 legally, can it, sir?

10 MS. McGARRY: Objection.

11 A. When you -- I'm not sure I understand what you  
12 mean by "overthrow the board of B.A.T. Industries."

13 Q. Well, obviously the power and control of the  
14 B.A.T. Industries Group lies with the board of B.A.T.  
15 Industries P.L.C.; right?

16 MS. McGARRY: Objection, misstates the  
17 prior testimony.

18 A. The board of directors of B.A.T. Industries make  
19 decisions for B.A.T. Industries P.L.C. The  
20 day-to-day operational decisions, the operational  
21 decisions that need to be taken in any operating  
22 subsidiary -- in many cases these will be  
23 thousands -- will be taken by that operating  
24 subsidiary. The board of B.A.T. Industries requires  
25 only that matters of a strategic nature --

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1 essentially matters of a strategic nature, which are  
2 set out in the delegated authority, are referred to  
3 the holding company.

4 Q. Sir, did you just tell us that matters of a  
5 strategic nature are delegated to the holding  
6 company? Is that right?

7 MS. McGARRY: Give me a chance to reread  
8 here the transcript.

9 MS. WIVELL: Let me withdraw the question.

10 Q. The board of B.A.T. Industries requires that  
11 matters of a strategic nature be del -- be dealt with  
12 by its board; right?

13 A. I believe that what I actually said was that  
14 matters of -- generally of a strategic nature -- and  
15 I think I then qualified it by reference to the  
16 delegated authority, matters which the delegated  
17 authority specifies -- have to be referred to the CEC  
18 and/or the main board of B.A.T. Industries.

19 Q. In other words, all strategic decisions  
20 governing the companies that comprise the B.A.T.  
21 Group are the responsibility of either the board or  
22 the CEC?

23 MS. McGARRY: Objection, misstates the  
24 witness's prior testimony.

25 A. I've said that the matters which are specified

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1 in the delegated authority are the matters which are  
2 required to be referred to the CEC and/or the main  
3 board, depending on the -- as the delegated authority  
4 says.

5 Q. And, sir, those include matters of policy on  
6 objectives and strategy; correct?

7 A. Section 1(a) of the delegated authority -- in  
8 fact, if I may take the sentence before the heading,  
9 it says "The following table indicates examples of  
10 the type of reference required." Reference required  
11 either is the CEC or the main board.

12 "SUBJECT

13 "1. POLICY

14 "(a) Objectives and strategies ...."

15 Q. And in other words, what this document,  
16 Exhibit 2301, is telling us is that objectives and  
17 strategies are the responsibility of either the --  
18 well of the main board of B.A.T. Industries P.L.C.;  
19 right?

20 A. No, I don't think the document's saying that at  
21 all. What the document is saying is the objectives  
22 and strategies developed by the operating companies  
23 have to be referred to the holding company. I -- can  
24 I just -- I'd like to give a bit of -- a bit more  
25 background about what a holding company -- what a

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1 holding company does.

2 Q. Well, sir, I'd like you to answer my questions,

3 and this document says that the -- it says under

4 "ULTIMATE REFERENCE" "Main Board" --

5 A. Yes.

6 Q. -- for point 1(a); right?

7 A. Yes.

8 Q. And that "Main Board" is the main board of

9 B.A.T. Industries P.L.C., isn't it?

10 A. It is the board of B.A.T. Industries P.L.C.

11 Q. All right. And that means that any decision

12 concerning the objectives and strategies of any of

13 the associated companies must be approved by the main

14 board of B.A.T. Industries P.L.C., doesn't it?

15 MS. McGARRY: Objection.

16 A. What it says is that objectives and strategies

17 of the operating companies -- let's read the words --

18 "including investment in, or divestment from, an

19 existing business, and investment in a new business,

20 over" -- this is a value of pounds 25 million

21 sterling, I think approximately 40 million dollars,

22 is to be referred to the main board. That's what the

23 document says.

24 Q. All right. And that is a required reference,

25 isn't it, sir?

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1 A. I think that's a fair point, yes.

2 Q. All right. And, sir, it is also true that the  
3 board of Brown & Williamson cannot set objectives and  
4 strategies for B.A.T. Industries P.L.C.; correct?

5 A. I -- I'm sorry, I think I -- I don't quite  
6 follow the question. Can you -- can you just repeat  
7 that, please.

8 Q. The board of Brown & Williamson cannot set  
9 objectives and strategies for B.A.T. Industries  
10 P.L.C.?

11 A. The board of B.A.T. Industries sets objectives  
12 and strategies for B.A.T. Industries P.L.C. Brown &  
13 Williamson may develop strategies and objectives for  
14 itself, and they may under the terms of the delegated  
15 authority require a reference to the CEC and/or the  
16 main board.

17 Q. Well, sir, if those policies and strategies --  
18 I'm sorry, strike that.

19 If the Brown & Williamson strategies and  
20 objectives which you just referred to are developed,  
21 they must be approved by the main board under  
22 Exhibit 2301; correct?

23 A. They must be approved by the main board to the  
24 extent that Exhibit 2301 requires them to be referred  
25 to the main board.

1 Q. And just so we're clear here, it says "The  
2 following table indicates examples of the type of  
3 reference required"; right?

4 A. Yes.

5 Q. It is not an exclusive list, is it, sir?

6 A. It is not an exhaustive list.

7 Q. And the first of those examples is "POLICY";  
8 right?

9 A. It's headed --

10 MS. McGARRY: Objection. Go ahead.

11 A. What the document actually says is "The  
12 following table indicates examples of the type of  
13 reference required:-

14 "SUBJECT

15 "1. POLICY."

16 Q. That is the first subject which must be then,  
17 according to this document, referred -- I'm sorry,  
18 approved by the main board of B.A.T. Industries  
19 P.L.C.; right?

20 MS. McGARRY: Objection, misstates the  
21 document and mischaracterizes the witness's prior  
22 testimony. You may answer.

23 A. Section 1 has a heading "POLICY." The reference  
24 is determined by what is contained in paragraph (a),  
25 objectives and strategies.

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1 Q. And objectives and strategies must be approved  
2 by the B.A.T. Industries board; correct?

3 A. Objectives --

4 MS. McGARRY: Objection. Go ahead.

5 A. Objectives and strategies developed by one of  
6 the operating companies which involve expenditure  
7 over a certain amount as determined by the delegated  
8 authority would require a reference to the B.A.T.  
9 Industries board or the Chief Executive's Committee.

10 Q. Sir, this document does not limit the reference  
11 of objectives and strategies to just those involving  
12 investment or divestiture; right?

13 MS. McGARRY: Objection. The document  
14 speaks for itself. You may answer.

15 MS. WIVELL: It certainly does.

16 MS. McGARRY: I beg your pardon?

17 MS. WIVELL: I said it most certainly  
18 does.

19 A. The doc --

20 MS. McGARRY: Would you like the witness to  
21 answer your question or --

22 MS. WIVELL: I certainly would.

23 MS. McGARRY: -- would you like to pose a  
24 new question in light of your commentary? Why don't  
25 you ask a new question now that we've been

1 interrupted.

2 BY MS. WIVELL:

3 Q. Sir, this document does not limit the reference  
4 of objectives and strategies to the board of B.A.T.  
5 Industries to just those items involving divestiture  
6 or investment?

7 MS. McGARRY: Objection.

8 A. The document neither limits nor expands. The  
9 document says "The following table indicates examples  
10 of the type of reference required."

11 Q. And so it would be fair to say that all  
12 objectives and strategies developed by a subsidiary  
13 company must be approved by the main board of B.A.T.  
14 Industries P.L.C. according to the language of  
15 Exhibit 2301?

16 A. No, the language of Exhibit 2301 is quite clear,  
17 and I can only -- I can't do any better than repeat  
18 the language. "Objectives and strategies (including  
19 investment in, or divestment from, an existing  
20 business, and investment in a new business, over  
21 25 million pounds)." That's what the document says.

22 Q. And it does not exclude other objectives or  
23 strategies which must be approved by the B.A.T.  
24 Industries board, does it, sir?

25 A. The document neither includes or excludes.

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1 Q. Well it says includes investment in or  
2 divestiture from an existing business and investment  
3 in new business over 25 million pounds; right?

4 A. It says "(including investment in, or divestment  
5 from, an existing business, and investment in a new  
6 business, over 25 million pounds)."

7 Q. Now just so we're clear here, every single one  
8 of the items that is listed in Exhibit 2301 under the  
9 "POLICY" heading, points (a), (b), (c), (d) and (e),  
10 those must either be approved by the B.A.T.  
11 Industries board or by the Chairman's Executive  
12 Committee; correct?

13 MS. McGARRY: Objection. You may answer.

14 A. I'm sorry, can you repeat the question.

15 Q. Yes. Every single one of the items that's  
16 listed in Exhibit 2301 under the "POLICY" heading,  
17 including points (a) through (e), must be either  
18 approved by the B.A.T. Industries board or by the  
19 Chairman's Executive Committee; correct?

20 MS. McGARRY: Objection.

21 A. The -- the document speaks for itself. The  
22 document says what has to be referred to the Chief  
23 Executive's Committee and/or the main board.

24 Q. Well, sir, based on your understanding of this  
25 document which you signed, you understand that all of

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1 those points, (a), (b), (c), (d) and (e), under  
2 "POLICY" must be approved by either the main board  
3 of B.A.T. Industries P.L.C. or the B.A.T. Industries  
4 P.L.C. Chairman's Executive Committee; right?

5 MS. McGARRY: Objection, asked and answered  
6 for three or four times previously and misstates the  
7 witness's prior testimony.

8 A. The -- the document states what the document  
9 states. The matters described in -- the matters  
10 specified in the paragraphs are the matters which are  
11 required to be referred to the main board and/or the  
12 CEC as specified.

13 Q. And just so we're clear, the main board you're  
14 referring to is the board of B.A.T. Industries  
15 P.L.C.; right?

16 A. The main board is a reference to the board of  
17 B.A.T. Industries P.L.C.

18 Q. Now, sir, among those items which are listed  
19 under "POLICY" that must be approved is the  
20 determination of business parameters for each  
21 operating group; right?

22 MS. McGARRY: Objection, mischaracterizes  
23 the document. You may answer.

24 A. Sorry, can you please repeat the question.

25 Q. Well let me rephrase it.

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1 Under Exhibit 2301, section 1, the business  
2 parameters for each operating group must be approved  
3 by B.A.T. Industries P.L.C.; correct?

4 MS. McGARRY: Objection.

5 A. The -- under document 2301, the determination of  
6 business parameters for each operating group has to  
7 be referred to the board of B.A.T. Industries.

8 That's what the document says.

9 Q. And they must be approved by the board of B.A.T.  
10 Industries P.L.C.; right?

11 A. Well it's unlikely that if the board of B.A.T.  
12 Industries objected, that the business parameters  
13 submitted by the operating company would go forward  
14 on the basis submitted.

15 Q. All right. Just so we're clear here, the  
16 business -- or the operating companies, including  
17 Brown & Williamson, must submit business parameters  
18 to the -- to the board of B.A.T. Industries P.L.C.;  
19 right?

20 A. The -- the process -- and I think I've described  
21 this before -- is where B.A.T. Industries issues  
22 guidelines to its subsidiaries, to its main operating  
23 subsidiaries. And in response to those guidelines,  
24 the subsidiaries then produce for discussion with the  
25 shareholder, with B.A.T. Industries, a plan preview.

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1 And as a result of those discussions, which is an  
2 exchange of ideas, the subsidiary then produces a  
3 plan for the forthcoming period.

4 Q. And the ultimate responsibility for approval of  
5 that plan lies with the board of B.A.T. Industries  
6 P.L.C. according to Exhibit 2301; isn't that true,  
7 sir?

8 MS. McGARRY: Just for clarification, we're  
9 talking about the time period of this document?

10 A. What happens is that when the plans -- the  
11 company plans are produced following the review --  
12 the preview process, they are then consolidated and a  
13 overall plan for the B.A.T. Industries Group of  
14 companies is then presented to the board and the  
15 board hopefully will accept the plan.

16 Q. But it has the authority to reject the plan,  
17 doesn't it, sir?

18 A. Of course. It's a company that holds -- it's  
19 a -- it's a holding company owning substantial  
20 investments in the form of shares in companies which  
21 are in business, and quite clearly the board has the  
22 ability to reject a plan. It -- the -- this is a --  
23 this is a entirely appropriate method for -- you  
24 know, for reviewing or looking after one's  
25 investments, and B.A.T. Industries is an investment

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1 holding company, delegates substantial day-to-day  
2 authority to its operating groups, but wishes to keep  
3 the opportunity to itself to review substantial  
4 matters affecting the operate -- operating groups,  
5 and that would be perfectly in accordance with what a  
6 holding company would do.

7 Q. And Brown & Williamson is one of those operating  
8 groups; right?

9 A. Brown & Williamson is -- well, can -- if I can  
10 just clarify here because we've been talking about a  
11 document which I think is dated in 1994, the  
12 delegated authority is from time to time revised and  
13 it has in fact been revised since this document.

14 Q. Let me re -- rephrase me question.

15 Brown & Williamson is one of the operating  
16 companies that we've been talking about; right?

17 A. In relation to this document in this time frame,  
18 yes, Brown & Williamson would be regarded as one of  
19 the operating companies. In fact, the document I  
20 think actually says so. It talks about operating  
21 groups, and then I think we saw the reference in  
22 section 3 to -- to B&W, --

23 Q. And --

24 A. -- Brown & Williamson.

25 Q. -- under Exhibit 2301, section 1(c), the main

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1 board of Brown -- I'm sorry, strike that.

2 Under Exhibit 2301, section 1(c), the main board  
3 of B.A.T. Industries P.L.C. has the control -- I'm  
4 sorry, the right to designate guidelines to operating  
5 companies; correct?

6 A. That's what the document says.

7 Q. All right. And they have the right to determine  
8 the business parameters for Brown & Williamson, don't  
9 they, sir?

10 A. The document says that a -- the determination of  
11 business parameters is a matter for reference to the  
12 main board, the board of B.A.T. Industries.

13 Q. And that means that the main board has the right  
14 to determine the business parameters for Brown &  
15 Williamson; right?

16 MS. McGARRY: Objection.

17 A. I think it means what I just said in my previous  
18 answer, but let me say that the -- if Brown &  
19 Williamson were to decide to invest in a completely  
20 new type of business, then it seems to me entirely  
21 appropriate that Brown & Williamson's ultimate parent  
22 company would have an interest in knowing about that  
23 proposal and having the opportunity to review it and  
24 to agree with it or disagree with it.

25 Q. And also according to -- oh, I'm -- excuse me,

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1 strike that.

2 It's just not a matter of having the  
3 opportunity. They have the right to veto it;  
4 correct?

5 A. Within the framework of the delegated authority,  
6 where the freedom and responsibilities in operations  
7 resides in the operating group on a day-to-day basis,  
8 yes, they have the right ultimately to veto.

9 Q. Just so we're clear here, the board of B.A.T.  
10 Industries does not take part in the determination of  
11 who, for example, Brown & Williamson is going to buy  
12 toilet paper from; right?

13 A. Yes, that's true.

14 Q. That is a matter that is left to the management  
15 of Brown & Williamson; right?

16 A. That is true.

17 Q. But the board of B.A.T. Industries P.L.C. has  
18 determined not to delegate to the board of Brown &  
19 Williamson the ability to develop strategies and  
20 objectives. That it has retained for itself under  
21 the first paragraph of Exhibit 2301 under "POLICY";  
22 right?

23 MS. McGARRY: Objection, mischaracterizes  
24 the document.

25 A. The document doesn't actually say what you've

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1 said. The document doesn't say anything to the  
2 effect that Brown & Williamson can't develop  
3 strategies, business parameters, et cetera. It  
4 simply says that they need to be referred to the  
5 board of B.A.T. Industries.

6 Q. And the board of B.A.T. Industries has the right  
7 to approve or disapprove those objectives and  
8 strategies that are developed by Brown & Williamson;  
9 right?

10 A. The board of B.A.T. Industries has the right to  
11 approve or disapprove those matters which are  
12 required to be referred to it under the terms of the  
13 delegated authority.

14 Q. And those matters that are required to be  
15 referred to it under the terms of the delegated  
16 authority include, quote, "Objectives and  
17 strategies," close quote; correct?

18 MS. McGARRY: Objection to the partial  
19 quotation. You may answer.

20 A. It includes "Objectives and strategies  
21 (including investment in, or divestment from, an  
22 existing business, and investment in a ... business,  
23 over pounds 25 million)."

24 Q. Well it also includes other kinds of objectives  
25 and strategies, doesn't it, sir?

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1 A. I don't -- I don't really understand the  
2 question. I'm sorry, could you give that to me  
3 again.

4 Q. It also includes other kinds of objectives and  
5 strategies, doesn't it, sir?

6 A. It neither includes nor excludes. The document  
7 says what the document says.

8 Q. Well, sir, isn't it a fact that the board of --  
9 of B.A.T. Industries P.L.C. has established  
10 strategies that Brown & Williamson must comply with  
11 in the area of smoking and health?

12 A. I'm not aware of any strategies in the area of  
13 smoking and health that B.A.T. Industries has  
14 established that Brown & Williamson must comply  
15 with.

16 Q. Well you --

17 A. I'm not sure what you mean by "strategies."  
18 Perhaps you could clarify.

19 Q. Well let me use the word "policy," sir. The  
20 board of B.A.T. Industries P.L.C. has established  
21 policies with regard to smoking and health which  
22 Brown & Williamson must abide by; isn't that true?

23 A. B.A.T. Industries has a position on the subject  
24 of smoking and health.

25 Q. And it is a policy, isn't it, sir?

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1 A. I have seen it referred to as a policy.

2 Q. And it was approved by the board of B.A.T.

3 Industries P.L.C., wasn't it, sir?

4 A. I have to assume that, but I don't know.

5 Q. And it is a policy which Brown & Williamson must  
6 abide by; isn't that true?

7 A. Well as I say, I've character -- I think I would  
8 characterize it as a statement of position, but I  
9 wouldn't expect Brown & Williamson to, I mean, depart  
10 from the position unless they had good reason for  
11 doing so.

12 Q. If they departed from the position without good  
13 reason for doing so -- I'm sorry, strike that.

14 If they departed from the position at all, it  
15 would be a matter that would subject their executives  
16 to dismissal or other penalty; correct?

17 A. I'm afraid that's hypothetical. I have --

18 MS. WIVELL: Let's go off the record.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 Q. Sir, I've had the reporter hand you what's  
23 previously been marked as Exhibit 317. This is a  
24 document on B.A.T. Industries stationery from P. J.  
25 Ricketts; correct?

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- 1 A. Yes, correct.
- 2 Q. All right. And at the time this document was
- 3 written, who -- what position did P. J. Ricketts
- 4 hold?
- 5 A. I believe he was a director of B.A.T.
- 6 Industries.
- 7 Q. A member of the board of directors of B.A.T.
- 8 Industries?
- 9 A. Yes, he was.
- 10 Q. This is directed to all operating group
- 11 chairmen/liaison directors; correct?
- 12 A. Yes.
- 13 Q. And it is entitled "LEGAL CONSIDERATIONS IN
- 14 SMOKING & HEALTH ISSUES"?
- 15 A. It's entitled, yes.
- 16 Q. And Mr. Ricketts sent this --
- 17 You've seen this document before, haven't you,
- 18 sir?
- 19 A. Yes, I have.
- 20 Q. All right. Mr. Ricketts attaches the B.A.T.
- 21 Industries policy on smoking and health; correct?
- 22 A. Yes, he attaches a document headed "LEGAL
- 23 CONSIDERATIONS ON SMOKING & HEALTH POLICY."
- 24 Q. And the attachment is the second page of the
- 25 document; right?

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1 A. Yes.

2 Q. The second page of the document is a policy  
3 approved by the board of B.A.T. Industries; correct?

4 A. I believe that's correct, yes.

5 Q. Now this policy was circulated, according to the  
6 cover memo, in 1984 as a result of a fresh -- what is  
7 referred to as a fresh spate of litigation against  
8 the tobacco industry there; correct?

9 MS. McGARRY: Objection.

10 A. The -- I don't know whether the document was  
11 circulated because of that. The document says  
12 "Recent changes in the law in some states in the  
13 U.S.A. have resulted in a fresh spate of litigation  
14 against the tobacco industry there."

15 Q. And it says "For this reason it is most  
16 important that other members of the Group are  
17 constantly aware of B.A.T Industries' stance on  
18 Smoking & Health"; right?

19 A. Yes, it does.

20 Q. And just so we're clear here, the B.A.T.  
21 Industries stance on smoking and health that's  
22 referred to is actually the document that's the  
23 second page of Exhibit 317?

24 A. Yes.

25 Q. And Mr. Ricketts then asked the chairmen of the

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1 operating groups to ensure the widest possible  
2 circulation within the group of this policy; right?

3 A. Yes, he asked, yes, "widest possible circulation  
4 in your Operating Group of the Group policy," yes.

5 Q. Now, sir -- excuse me -- at the time this  
6 document was sent in 1984, Brown & Williamson was an  
7 operating group of B.A.T. Industries?

8 A. At the time of this document, Brown & Williamson  
9 was a subsidiary of BATUS, which was a -- regarded as  
10 an operating group of B.A.T. Industries.

11 Q. And, sir, this document, Exhibit 317, was  
12 intended to find its way into the hands of Brown &  
13 Williamson; correct?

14 A. I don't know what the intention was. It  
15 certainly asked for "the widest possible circulation  
16 in your Operating Group."

17 Q. All right. And Mr. Ricketts also noted it was  
18 important that members of the group be aware of the  
19 stance on smoking and health; right?

20 A. Yes, that's what the first paragraph says, yes.

21 Q. And, sir, if we turn -- excuse me -- to the  
22 second page of the document, we see that it starts  
23 off noting that it summarizes the policy of B.A.T.  
24 Industries Group in relation to smoking-and-health  
25 issues; right?

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1 A. That's what it says.

2 Q. And it would be fair to say that because this

3 policy had been adopted by the board of B.A.T.

4 Industries P.L.C., that the board of Brown &

5 Williamson could not have on its own established a

6 different policy other than what is stated here

7 without seeking approval of the B.A.T. Industries

8 board; right?

9 A. It would be expected to have a consistent

10 policy.

11 Q. And it could not have adopted an inconsistent

12 policy with what is written here, could it?

13 A. I'm -- when you say it couldn't have, I'm not --

14 do you mean it never could have or it can't? I mean,

15 no circumstances -- circumstances could it have a

16 different policy?

17 Q. On its own, it could not adopt a different

18 policy than the one stated here on smoking and

19 health, could it?

20 A. I think that's reasonable.

21 Q. And as a matter of fact, Brown & Williamson

22 personnel were expected to follow the policy that is

23 written on the second page of Exhibit 317 with regard

24 to smoking and health; correct?

25 A. Operating groups were expected to follow the

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1 policy. If your -- I mean, operating -- it says the  
2 operating groups were expected to follow the policy.

3 Q. And Brown & Williamson was a member of one of  
4 those operating groups, wasn't it, sir, --

5 A. Yes.

6 Q. -- at the time this policy was circulated?

7 A. Yes.

8 Q. Now, sir, if we look at the end of the second  
9 paragraph of the second page, it says "No conclusive  
10 scientific evidence has been advanced and the  
11 statistical association does not amount to proof of  
12 cause and effect. Thus a genuine scientific  
13 controversy exists"; correct?

14 A. It says that.

15 Q. And that was a policy that was established by  
16 the B.A.T. Industries board; isn't that true, sir?

17 A. That is a part of the policy established by the  
18 B.A.T. Industries board. The rest of the paragraph,  
19 which you haven't read, reads "For this reason it is  
20 essential that statements about cigarette smoking or  
21 the smoking and health issue generally must be  
22 factually and scientifically correct. The issue is  
23 controversial and there is no case for either  
24 condemning or encouraging smoking."

25 Q. It goes on, doesn't it, sir?

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1 A. It goes on.

2 Q. Yes. It says "It may be responsible for the  
3 alleged smoking related diseases or it may not." But  
4 "No" -- and then "No conclusive scientific evidence  
5 has been advanced and the statistical association  
6 does not amount to proof of cause and effect. Thus a  
7 genuine scientific controversy exists"; right?

8 A. That's what the words say, yes.

9 Q. Now if Brown & Williamson had decided that there  
10 was a cause-and-effect relationship between cigarette  
11 smoking and disease, the existence of this policy  
12 prevented Brown & Williamson from saying so; isn't  
13 that true?

14 MS. McGARRY: Objection, calls for  
15 speculation, but I'll permit the witness to answer.

16 A. I'm sorry, could you repeat the question,  
17 please.

18 Q. Yes. If Brown & Williamson had decided that  
19 there was a cause-and-effect relationship between  
20 cigarette smoking and disease, the existence of this  
21 policy prevented Brown & Williamson from saying so;  
22 isn't that true, sir?

23 MS. McGARRY: Same objection.

24 A. I -- I'm sorry, can you -- can you -- can I ask  
25 you to repeat the question again? I'm --

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1 Q. Certainly. If Brown & Williamson had decided  
2 that there was a cause-and-effect relationship  
3 between cigarette smoking and disease, the existence  
4 of this policy prevented Brown & Williamson from  
5 saying so; isn't that true, sir?

6 MS. McGARRY: Objection.

7 A. I don't -- I think that's mischaracterizing what  
8 the policy -- what the policy actually says. I mean,  
9 you -- I can only take the words of the policy. I  
10 don't think the policy actually says that.

11 Q. Well, sir, it says that a genuine scientific  
12 controversy exists; correct?

13 A. Yes.

14 Q. And then it goes on to say "The Group's position  
15 is that causation has not been proved ..."; right?

16 A. Yes.

17 Q. Now if Brown & Williamson had decided that cause  
18 and effect had been proved, the existence of this  
19 policy prevented Brown & Williamson from saying so;  
20 isn't that true, sir?

21 MS. McGARRY: Objection.

22 A. I don't think the document says that.

23 Q. Well, sir, isn't it a fact that Brown &  
24 Williamson could not have told the public, for  
25 example, that causation had been proved without

1   subjecting itself to discipline or other sanctions  
2   for violating B.A.T. Industries policy?

3                   MS. McGARRY:   Objection.

4   A.   I -- I can't speculate on that.  I just don't  
5   know the answer.

6                   (Plaintiffs' Exhibit 623 was marked  
7                   for identification.)

8   BY MS. WIVELL:

9   Q.   Sir, showing you what's been marked as  
10   Plaintiffs' Exhibit 623, this is a statement of  
11   business conduct; correct?

12   A.   Yes, correct.

13   Q.   It's Bates numbered beginning 503074962;  
14   correct?

15   A.   Correct.

16   Q.   This is a document with which you are familiar,  
17   isn't it, sir?

18   A.   Yes, I am familiar with it.

19   Q.   You've read it?

20   A.   I have read it.

21   Q.   And it is a B.A.T. Industries P.L.C. statement  
22   of business conduct; correct?

23   A.   It's a statement of business conduct approved by  
24   the board of B.A.T. Industries, yes.

25   Q.   And it says at the top of the page that ends

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1 with Bates number 965, quote, "B.A.T INDUSTRIES PLC  
2 STATEMENT OF BUSINESS CONDUCT," doesn't it, sir?

3 MS. McGARRY: Ms. Wivell, can I ask you to  
4 keep your voice down. You're getting a bit loud.

5 A. Yes.

6 Q. And if we look at the introduction section, it  
7 says "This Statement of Business Conduct applies to  
8 all directors, officers and employees of B.A.T  
9 Industries p.l.c. and its principles apply to all  
10 directors, officers and employees of every company  
11 within the B.A.T Industries Group of companies";  
12 right?

13 A. That's what it says.

14 Q. Now this document -- the --

15 The statements that are included in this  
16 document, Exhibit 623, apply to Brown & Williamson,  
17 don't they, sir?

18 A. "This Statement of Business Conduct applies to  
19 all directors, officers and employees of B.A.T  
20 Industries ... and its principles apply to all  
21 directors, officers and employees of every company  
22 within the B.A.T Industries Group ...." Its  
23 principles would apply to Brown & Williamson.

24 Q. And this --

25 The date of issue of this particular edition of

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- 1 the document is the 21st of December 1993; right?
- 2 A. I'm sorry, can you refer me to --
- 3 Q. Yes.
- 4 A. Oh, yes, yes, I see it on page 19.
- 5 Q. But the statement of business conduct was not --
- 6 was not adopted for the first time as of that date.
- 7 This is just the latest version of this document;
- 8 right?
- 9 A. I believe, in fact, this is the first version of
- 10 the statement of business conduct.
- 11 Q. Did you help write this document, sir?
- 12 A. No, I didn't.
- 13 Q. But you have read it as part of your duties as
- 14 secretary of B.A.T. Industries; right?
- 15 A. Indeed.
- 16 Q. Now, sir, there is a statement of purpose for
- 17 this document that appears beginning on page 965;
- 18 right?
- 19 A. Yes.
- 20 Q. And according to that statement of purpose, this
- 21 document provides guidance as to the principles of
- 22 business behavior which all staff are expected to
- 23 observe; right?
- 24 A. Yes.
- 25 Q. Now that --

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1           That means that Brown & Williamson personnel are  
2   expected to abide by what's written in this document;  
3   isn't that true?

4   A.   They're expected to observe the principles of  
5   business behavior which are referred to in the  
6   document.  And if I may refer you to those principles  
7   of business behavior, they are set out in paragraph  
8   three on page two of the document.

9   Q.   Now it also says in that first -- in that  
10   paragraph under "Purpose" that the -- "This Statement  
11   is not intended to replace policies and guidelines  
12   which have hitherto been approved or been adopted  
13   from time to time by the B.A.T Industries Board";  
14   right?

15   A.   That's what the words say.

16           Can I just go back?  I hadn't in fact finished  
17   my last answer.

18           MS. McGARRY:  Do you need the question and  
19   answer reread to see where you were in your answer?

20           THE WITNESS:  Yes, yes, please.

21           MS. McGARRY:  Okay.  The question was:  
22   "Now that --

23           "That means that Brown & Williamson personnel  
24   are expected to abide by what's written in this  
25   document; isn't that true?"

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1           The beginning of your answer was: "They're  
2 expected to observe the principles of business  
3 behavior which are referred to in the document. And  
4 if I may refer you to those principles of business  
5 behavior, they are set out in paragraph three on page  
6 two of the document."

7   A.   And I quote, "The prime two principles are (i)  
8 observance of the laws in every jurisdiction in which  
9 B.A.T Group companies operate and (ii) in following  
10 that principle within the group, the observance of  
11 the highest standards of integrity in the conduct of  
12 our business activities."

13   Q.   Move to strike as nonresponsive, move to strike  
14 the nonresponsive portion of the answer.

15           Sir, the document goes on then to state under  
16 purposes "This Statement is not intended to replace  
17 policies and guidelines which have hitherto been  
18 approved or been adopted from time to time by the  
19 B.A.T Industries Board. A list of existing policies  
20 and guidelines which pertain to this Statement  
21 appears at Appendix 1"; right?

22   A.   That's what it says.

23   Q.   And it goes on to say "This Statement is  
24 intended to supplement and set these matters in their  
25 proper context and in" doing so "to give them"

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1 enhance -- "enhanced meaning and to provide a context  
2 for future policy documents"; right?

3 A. That's what the document says.

4 MS. McGARRY: "In so doing."

5 Q. Now, sir, would you turn to Appendix 1 at the  
6 end of the document.

7 A. Yes.

8 Q. And among the policies that is listed there is  
9 one entitled, quote, "Legal Considerations on  
10 Smoking & Health Policy, March 1984"; right?

11 A. Yes.

12 Q. And so this is a reference to the document that  
13 we had just had in front of us, Exhibit 317; right?

14 A. I believe that to be the case.

15 Q. Now, sir, this document also discusses what will  
16 happen if someone within the B.A.T. Group breaches  
17 one of those policies; isn't that true, sir?

18 MS. McGARRY: Objection. Which of the  
19 documents?

20 MS. WIVELL: Let me rephrase the question.

21 Q. Exhibit 623 also discusses what will happen if  
22 someone within the B.A.T. Group breaches one of the  
23 B.A.T. Industries policies; correct?

24 A. Yes, it does deal with that subject.

25 Q. And if you turn to the page that ends with Bates

1 number 967, we see what the consequences of a breach  
2 of a B.A.T. Industries board policy such as the one  
3 on smoking and health -- I'm sorry, strike that.

4 And if we turn to the page that ends with Bates  
5 number 967, we see what the consequences will be of a  
6 breach of a B.A.T. Industries board policy such as  
7 the one on smoking and health; right?

8 MS. McGARRY: Objection, mischaracterizes  
9 the document. You may answer.

10 A. The document says what it says. I mean, it  
11 says -- I can quote from the document. It says "It  
12 is" ex -- the question is how much do I quote from  
13 this. There's quite a lot here.

14 Q. Well you can start there. That's fine.

15 A. "... expected that any exception to or breach of  
16 the principles encompassed by this Statement will  
17 usually be dealt with by immediate management  
18 disciplinary action (which may include dismissal in  
19 an appropriate case) in the usual course and recorded  
20 as appropriate. But where that does not happen (or  
21 in cases of doubt) the breach (or possible breach or  
22 exception) must be reported to (or guidance sought  
23 from) either the Group Internal Auditor or, in  
24 matters relating to laws and regulations, The  
25 Solicitor."

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1 Q. Sir, could you turn back to Plaintiffs'

2 Exhibit 317, please, the legal considerations on  
3 smoking-and-health policy.

4 A. Yes.

5 Q. Let me ask you again. Directing you to the  
6 statement at the beginning of the third paragraph,  
7 "The Group's position is that causation has not been  
8 proved," isn't it true, sir, that if Brown &  
9 Williamson had believed that causation had been  
10 proved, because of this policy in Exhibit 316 -- or  
11 317, it could not tell the public that?

12 MS. McGARRY: Objection, mischaracterizes  
13 both documents. You may answer.

14 A. The documents don't say that.

15 Q. Well, sir, it says --

16 It tells us what the group's position on  
17 causation is; right?

18 A. Yes, it does.

19 Q. And if anyone at Brown & Williamson had taken a  
20 different position on smoking and causation, that --  
21 taking that position would have suggested --  
22 subjected them to discipline according to the  
23 paragraph that you just read out of Exhibit 623;  
24 correct?

25 MS. McGARRY: Objection, asked and answered

1 several times and mischaracterizes the documents.

2 I'll let the witness answer one more time.

3 A. I'm sorry, could you read back the question to  
4 me, please.

5 Q. Yes. If anyone at Brown & Williamson had taken  
6 a different position on smoking and causation, taking  
7 that position would have subjected them to discipline  
8 according to the paragraph you just read out of  
9 Exhibit 623?

10 MS. McGARRY: Same objections.

11 A. That's really just too simplistic an approach  
12 to -- to take. It's quite obvious that individuals  
13 will hold different opinions about different  
14 matters. The same matter may -- different people  
15 will hold different opinions about the same matter,  
16 and just because an individual in Brown & Williamson  
17 may think that causation has been proved doesn't --  
18 doesn't make the -- you know, doesn't make the -- the  
19 case one way or the other. There is a scien --  
20 genuine scientific controversy.

21 Nor does the statement of business conduct  
22 itself say that they will be disciplined. It says  
23 that that may usually be the case, but also it has to  
24 be read in the context of the document as a whole.  
25 And if one looks at the appendix, the back of the

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1 document where it refers to the number of -- to a  
2 number of relevant policies which are mentioned  
3 there, you will see a policy on the subject of, for  
4 example, insider dealing. The insider dealing policy  
5 is one where it seems to me fairly likely that the  
6 breach -- an intentional breach of the insider  
7 dealing policy could well result in someone's  
8 dismissal, the reason being that if a senior employee  
9 in possession of unpublished price-sensitive  
10 information were to trade on the basis of that  
11 information, it would give rise to sanction not just  
12 for the individual in terms of a prosecution, loss of  
13 employment and so on, but it would clearly bring the  
14 whole of the company into disrepute, and in those  
15 circumstances it's quite clear that the -- you know,  
16 that the company would have good grounds for acting  
17 and taking disciplinary measures.

18 And you've got to read the statement of business  
19 conduct in -- in -- in that context as a whole as --  
20 as well as the fact, as I've said, that this  
21 statement is not explicit, does not say explicitly  
22 that immediate management disciplinary action will  
23 follow.

24 Q. Well it does say on page 966 that senior  
25 management are accountable for ensuring adherence to

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1 the principles encompassed in the statement by all  
2 staff; right?

3 A. Yes, and "the principles" is a reference to  
4 principles (i) and (ii) referred to in paragraph  
5 three above.

6 Q. And, sir, let me re-ask the question a little  
7 bit differently.

8 If Brown & Williamson as a company had decided  
9 that causation had been proven in the  
10 smoking-and-health area, the existence of the policy  
11 expressed in Exhibit 317 would have prevented that  
12 company, Brown & Williamson, from publicly stating  
13 its new position; isn't that true?

14 MS. McGARRY: Objection.

15 A. I don't think the document leads to that  
16 conclusion and I think it's -- it's an artificial way  
17 of looking at things because the idea that Brown &  
18 Williamson would suddenly come across the -- the  
19 issue of causation and determine that their -- that  
20 the causation had been -- had been proved and would  
21 suddenly be in a position to announce this without  
22 having consulted anybody or obtained peer review of  
23 their own conclusions is I think a little bit  
24 fanciful.

25 Q. Well, sir, I'm asking you to assume

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1 hypothetically that that did happen and that Brown &  
2 Williamson as a company came to the conclusion that  
3 cigarette smoking does cause disease. The existence  
4 of the policy as expressed in 317 would prevent  
5 Brown & Williamson from publicly stating that policy,  
6 wouldn't it, sir?

7 MS. McGARRY: Objection, asked and answered  
8 and mischaracterizes the document.

9 A. I've said before -- I don't know how I can  
10 answer my previous answer, but the document does not,  
11 would not lead to that result, would not prevent  
12 Brown & Williamson stating their -- stating that  
13 position.

14 Q. Sir, would you turn to the page that ends with  
15 Bates number 978. Smoking-and-health policy is even  
16 incorporated into this document, isn't it, sir?

17 A. There is a statement on smoking-and-health  
18 policy in the document, yes.

19 Q. And part of that statement says "It is the  
20 considered view of the Group that (1) scientific  
21 causation between smoking and diseases allegedly  
22 related to smoking has not been established; and that  
23 (2) the Group should not make health claims for  
24 tobacco products in connection with product  
25 promotion"; correct?

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1 A. The --

2 MS. McGARRY: I object to Ms. Wivell  
3 deliberately leaving out the first sentence -- excuse  
4 me -- the first sentence of that paragraph, but you  
5 may answer whether her partial quotation is correct.

6 A. The partial quotation is correct, but as you  
7 say, it misses out the first sentence of the  
8 paragraph, which I would like to read, and says "It  
9 is important that statements made concerning  
10 cigarette smoking and health related issues be  
11 factually and scientifically accurate."

12 Q. Move to strike the nonresponsive portion.

13 Now, sir, isn't it a fact that the very language  
14 of Exhibit 623 requires Brown & Williamson to abide  
15 by this policy?

16 MS. McGARRY: "This policy" being this  
17 smoking-and-health policy, two paragraphs quoted on  
18 page 978?

19 MS. WIVELL: Yes.

20 A. Brown & Williamson would be expected to comply  
21 with the policy stated in those two paragraphs.

22 Q. And if Brown & Williamson personnel did not  
23 comply, they could be subject to discipline by B.A.T.  
24 Industries P.L.C.; correct?

25 A. Working on the assumption that we've previously

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1 discussed, they may; they may not.

2 Q. Well the right to discipline someone who

3 violates the smoking-and-health policy lies with

4 B.A.T. Industries P.L.C.; correct?

5 A. I can only read what the document says. Again

6 refer to paragraph four on page two,

7 "Accountability." "Whilst individuals are expected

8 to be accountable for their own actions, senior

9 management are vitally involved in setting and

10 assuring adherence to the principles encompassed by

11 this Statement by all staff. Staff at all levels are

12 accountable for acting in accordance with these

13 principles to the full extent of their

14 responsibility."

15 Q. And then the next section goes on to talk about

16 what will happen if someone breaches the principles

17 encompassed by the statement; right?

18 A. It talks about exceptions to or breaches of the

19 principles encompassed by the statement.

20 Q. And while it does not say what the B.A.T.

21 Industries board will do, it sets forth -- forth what

22 the B.A.T. Industries board may do; correct?

23 MS. McGARRY: Objection, mischaracterizes

24 the document.

25 A. It doesn't set forth what the B.A.T. Industries

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1 board may or may not do. It simply talks about a  
2 potential for immediate management disciplinary  
3 action, which may or may not occur.

4 Q. Sir, the bottom line is that if someone were to  
5 take a position differently -- strike that.

6 Sir, the bottom line is that if someone within  
7 the Brown & Williamson group were to publicly take a  
8 position differently than the smoking-and-health  
9 policy which was established in 1984, they could be  
10 fired by B.A.T. Industries; correct?

11 MS. McGARRY: Objection. This has been  
12 asked and answered so many times, Ms. Wivell.

13 A. The policy does not provide for that, and in any  
14 event, B.A.T. Industries itself would not take  
15 decisions to fire, to terminate the employment of  
16 individuals employed by Brown & Williamson.

17 Q. But this document gives them the right to do  
18 that, doesn't it, sir?

19 MS. McGARRY: Objection, mischaracterizes  
20 the document. We've been going over and over this.

21 A. I really don't know what more I can add to my  
22 previous answer.

23 Q. Well, sir, this document was established by the  
24 B.A.T. Industries board, Exhibit 623; right?

25 MS. McGARRY: Objection, asked and

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1 answered.

2 A. This statement was approved by the board of  
3 B.A.T. Industries.

4 Q. And the board of B.A.T. In -- B.A.T. Industries  
5 expects what is written here to be abided by, doesn't  
6 it?

7 A. It expects observance with the principles set  
8 out in the statement of business conduct.

9 Q. And it sets forth consequences that can happen  
10 if those principles are not abided by; right?

11 A. It sets out consequences which may occur.

12 MS. McGARRY: 12:35.

13 MS. WIVELL: Let's take a lunch break.

14 THE REPORTER: Off the record, please.

15 (Luncheon recess taken at 12:35 o'clock  
16 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:47 o'clock  
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, I understand that you have the answer to  
6 the question that I had asked you to report on.

7 A. Yes, I do.

8 Q. All right. And if I recall correctly, I had  
9 asked you to find out whether the minutes of the  
10 shareholders' meeting for -- I believe it's June 1982  
11 meeting reflected whether a presentation was given.

12 A. Yes, and the minutes don't reflect whether a  
13 presentation was given.

14 Q. So as you sit here right now, you just don't  
15 know whether that presentation was given one way or  
16 the other; right?

17 A. That's right.

18 Q. Okay. Now, sir, be -- before we took our lunch  
19 break, we were talking about the policy which is  
20 enunciated in Exhibit 317; right?

21 A. Yes.

22 Q. All right. Do you want to get that exhibit back  
23 in front of you.

24 The policy which is set forth in Exhibit 317 is  
25 still in effect today, isn't it, sir?

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1 A. Yes, it is.

2 Q. And when the B.A.T. Industries board adopted  
3 that policy statement, it knew it had an operating  
4 company in the United States to which that statement  
5 would apply, didn't it?

6 A. I imagine it did, yes.

7 Q. All right. And in fact, the document refers to  
8 litigation in the United States, doesn't it, sir?

9 A. Yes, it -- well it refers to the spread of  
10 strict or no-fault liability in the USA.

11 Q. And so it's clear that the B.A.T. Industries  
12 board was aware of the potential for tobacco  
13 litigation in the United States when it --

14 MS. McGARRY: Objection.

15 Q. -- adopted this policy statement?

16 MS. McGARRY: Objection.

17 A. I don't know what was -- what the board was  
18 aware of or not. I can only say what the words say.

19 Q. Well we know from the cover memo that the board  
20 was aware of tobacco litigation in the United States  
21 because it's referred to in the first paragraph of  
22 the cover memo; right?

23 A. Yes, it is.

24 Q. Now, sir, at the time the board made this  
25 statement which is the second page of Exhibit 317, it

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1 was aware that public statements would be made in the  
2 United States pursuant to this policy; right?

3 A. I -- I simply don't know.

4 MS. McGARRY: Objection.

5 Q. It would be reasonable to assume that, wouldn't  
6 it, sir?

7 MS. McGARRY: Objection.

8 A. I just don't know.

9 Q. Well, sir, it would be reasonable -- I'm sorry,  
10 strike that.

11 When the board made this policy, it expected  
12 that policy to be applied in Minnesota; right?

13 MS. McGARRY: Objection.

14 A. There's no statement in the document that  
15 suggests that the board expected it would be applied  
16 in Minnesota. I just don't know the answer to that  
17 question.

18 Q. Well there are statements that would lead you to  
19 believe that it expected it to be -- it expected the  
20 policy to be applied worldwide; right?

21 MS. McGARRY: Objection.

22 A. This isn't in the nature of a statement  
23 requiring application. This is in the nature of a  
24 statement explaining the company's position.

25 Q. And this statement applies to all of the



1 companies in the B.A.T. Group worldwide; right?

2 A. This note summarizes the policy of the B.A.T.

3 Industries Group in relation to smoking-and-health

4 issues.

5 Q. And it was sent to all of the companies so that

6 all of the companies, even the non-tobacco companies,

7 would be aware of the statement and be governed by

8 it; right?

9 MS. McGARRY: Objection.

10 A. It would --

11 Certainly from the heading on the document

12 itself, it would have been sent to all operating

13 groups, so to the extent that the operating groups

14 were not tobacco companies.

15 Q. Well the last paragraph of the policy refers to

16 the non-tobacco companies, doesn't it, sir?

17 A. Yes, it does.

18 Q. And it basically advises them that they have to

19 be aware of this policy and govern their activities

20 according to it; right?

21 A. It says "Non-tobacco companies in the Group must

22 particularly" be aware -- "beware of any commercial

23 activities or conduct which could be construed as

24 discrimination against tobacco or tobacco

25 manufacturers (whether or not involving companies

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1 within the group), since this could adversely affect  
2 the position of Brown & Williamson in current US  
3 product liability litigation in the US."

4 Q. All right. Now, sir -- strike that.

5 Even before the statement of business conduct,  
6 Exhibit 623, was adopted by B.A.T. Industries, B.A.T.  
7 Industries expected Brown & Williamson employees  
8 would adhere to the smoking -- the policy on smoking  
9 and health; right?

10 A. It's clear from the document that they would  
11 have expected the operating groups to be aware of the  
12 policy on smoking and health.

13 Q. And since Brown & Williamson was part of the  
14 operating groups, it expected -- B.A.T. Industries  
15 expected Brown & Williamson to be aware of this  
16 policy; right?

17 A. To be aware of this policy.

18 Q. And that is even -- even before the statement of  
19 business conduct was adopted in 1993; right?

20 A. Yes.

21 Q. Now, sir, the last paragraph of the policy,  
22 which is the attachment to Exhibit 317, refers people  
23 in doubt about its meaning to either their in-house  
24 counsel or B.A.T. Industries' legal department;  
25 right?

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1 MS. McGARRY: Objection.

2 A. Could you read the question again, please.

3 Q. Certainly. Well, the last sentence of the  
4 policy, which is the attachment to Exhibit 317, says  
5 that "If in doubt, companies should not hesitate to"  
6 contact "their inhouse counsel ..."; right?

7 MS. McGARRY: "Consult."

8 Q. "Consult their inhouse counsel"; right?

9 A. Yes, it says that.

10 Q. All right. And it also says that if they're in  
11 doubt, companies should not hesitate to consult  
12 B.A.T. Industries' legal department; right?

13 A. Yes, it does.

14 Q. And it goes on to say B.A.T. Industries' legal  
15 department has -- or I'm sorry.

16 It says "... who have up-to-date information on  
17 the legal situation affecting the tobacco companies";  
18 right?

19 A. It says that, yes.

20 Q. All right. And in fact, B.A.T. Industries'  
21 legal department did have up-to-date information on  
22 the tobacco litigation; correct?

23 A. At what particular time? Sorry, I'm --

24 Q. Well at the time this policy was written, 1984.

25 A. It's not unreasonable to suggest that. That's

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1 consistent with what the document says, I think.

2 Q. All right. And they have up-to-date information  
3 on the smoking-and-health litigation in the U.S.  
4 today; right?

5 A. I believe, yes, they have knowledge of the --

6 Q. And that's true whether or not they're a party  
7 to the litigation; right?

8 A. I would --

9 Yes, they would be aware of cases involving  
10 operating companies.

11 Q. Now, sir, an Audit Committee was set up to  
12 assure compliance with this group policy, wasn't it?

13 A. No, not to ensure compliance. To ensure  
14 compliance with the smoking-and-health policy?

15 Q. Yes, sir.

16 A. Not -- not to my knowledge, no.

17 Q. All right. Well an Audit Committee had the  
18 responsibility for ensuring compliance with this  
19 policy; isn't that true?

20 A. I think the -- this -- I need to put this in its  
21 context. The -- the Audit Committee of B.A.T.  
22 Industries has existed, I believe, since the late  
23 1960s or possibly sometime in the early '70s, so  
24 before this -- sorry, the B.A. -- the Industries --  
25 the Audit Committee of B.A.T. Industries existed

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1 since the late 1970s or early 1980s, before this  
2 statement had actually been --

3 Q. But --

4 A. -- issued.

5 Q. But one of the -- the --

6 MS. McGARRY: Had you finished?

7 THE WITNESS: I -- I hadn't, no.

8 MS. WIVELL: Oh, I'm sorry.

9 A. I was then going to go on to say that this  
10 policy statement which, as you say, is mentioned in  
11 Appendix 1 -- as you said before, is mentioned in  
12 Appendix 1 to the statement of business conduct and  
13 the statement of business conduct talks about a  
14 review of the compliance with the principles  
15 underlying the statement of business conduct by  
16 the -- by the Audit Committee, so in that indirect  
17 sense.

18 Q. That's what I was going to ask you next, sir.  
19 This policy, exhibit -- I'm sorry.

20 This statement of business conduct, Exhibit 623,  
21 does refer to the fact that the B.A.T. Industries  
22 Audit Committee has a responsibility with regard  
23 to -- to ensuring compliance with the -- the  
24 statement; right?

25 MS. McGARRY: Objection.

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1 A. The statement reads "The Group Internal Auditor  
2 and The Solicitor shall make a report annually to the  
3 B.A.T Industries Audit Committee concerning (i)  
4 general compliance with this Statement throughout the  
5 Group and (ii) specific circumstances of violation  
6 which they may consider to be of interest to that  
7 Committee."

8 Q. And in the immediately preceding -- I'm sorry.

9 And if we look at the paragraph that begins on  
10 the page that ends with Bates number 983 of  
11 Exhibit 623, we see that the B.A.T. Industries Audit  
12 Committee is to report general compliance with the  
13 statement of business conduct throughout the group;  
14 right?

15 A. Sorry, could you read the question again,  
16 please.

17 Q. Certainly. If we look at the paragraph that  
18 begins with the words "The Group Internal Auditor and  
19 The Solicitor" on the page that ends Bates number  
20 983, we see that the B.A.T. Industries Audit  
21 Committee is to report general compliance with the  
22 statement of business conduct, correct, or general  
23 compliance to the statement of business conduct?

24 A. No, the -- the report comes from the group --  
25 the paragraph says that the report will be made by

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1 the group internal auditor and the solicitor.

2 Q. Together; right?

3 A. Yes, "... will together present annually to the  
4 B.A.T Industries' Audit Committee a report as to (i)  
5 general compliance ...."

6 Q. And the general compliance is general compliance  
7 with the statement of business conduct and the  
8 policies of the board; right?

9 MS. McGARRY: Objection.

10 A. It's "... general compliance with the Statement  
11 of Business Conduct throughout the Group and (ii)  
12 specific matters which they consider may be of  
13 interest to" the "Audit Committee."

14 Q. And in fact, if we look at the last paragraph of  
15 the policy in Exhibit 317, it makes specific  
16 reference -- oh, I'm sorry, strike that.

17 Sir, isn't it a fact that in addition to the  
18 policy statements on smoking and health, the B.A.T.  
19 Industries board established guidelines for public  
20 affairs relating to the issues of smoking and  
21 health?

22 A. I'm not personally aware of those guidelines.

23 (Plaintiffs' Exhibit 624 was marked  
24 for identification.)

25 BY MS. WIVELL:

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1 Q. Showing you what's been marked as Plaintiffs'  
2 Exhibit 624, this is a document on B.A.T. Industries  
3 stationery; correct?  
4 A. This is the stationery of B.A.T. Industries.  
5 Q. And it begins with Bates number 680585231;  
6 correct?  
7 A. Yes, correct.  
8 Q. Now, sir, this is a document entitled "BAT BOARD  
9 GUIDELINES, PUBLIC AFFAIRS"; right?  
10 A. It is entitled that, yes.  
11 Q. All right. And you've seen this document  
12 before, haven't you, sir?  
13 A. No, I haven't seen this document before.  
14 Q. Have you --  
15 Turning to the third page of the document, do  
16 you see "1982 B.A.T. BOARD GUIDELINES, PUBLIC  
17 AFFAIRS"?  
18 A. Yes, I do.  
19 Q. And that is the front of a -- of a booklet;  
20 right?  
21 A. I don't know. I'm assuming it's the front page  
22 of, yes, the rest of this document.  
23 Q. All right. Is that a booklet that you have seen  
24 during your duties as secretary of B.A.T.  
25 Industries?

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1 A. I have no recollection of having seen this  
2 document before.

3 Q. All right. This document is marked "SECRET,"  
4 isn't it?

5 A. The front page to which you referred me has a  
6 mark "SECRET" on it, yes.

7 Q. All right. Now, sir, these policy guidelines  
8 were adopted by the board of B.A.T. Industries;  
9 correct?

10 A. I have no knowledge.

11 Q. Well looking at them, that's what they say;  
12 isn't that true?

13 MS. McGARRY: That's a different question.

14 A. Well I have some difficulty here because if  
15 you're asking me to look at this document, which I've  
16 never seen before, and to tell you whether that's  
17 true, I'm going to have to read the document, and I  
18 presume you don't want me to read this document.

19 Q. Is --

20 Sir, is there someone you can check with to  
21 determine for us definitively whether these  
22 guidelines were adopted by the B.A.T. Industries  
23 board?

24 A. I can certainly make checks to see whether the  
25 minutes of the board of B.A.T. Industries reflect

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1   them having approved these guidelines.

2   Q.   And how would you go about making that check,  
3   sir?

4   A.   Well in normal circumstances, I would obtain the  
5   minute book for the relevant year and I would review  
6   the minute book.

7   Q.   These guidelines were sent out by T. J. Walker  
8   in 1982, weren't they, sir?

9           MS. McGARRY:  Objection.  Are you asking  
10   for the witness's personal knowledge or are you  
11   asking him to read a document that he hasn't seen  
12   before today and tell you what it says, which you can  
13   do as easily as he can?

14           MS. WIVELL:  No, I'm asking, because I'm  
15   taking the deposition of B.A.T. Industries P.L.C.,  
16   about a document which I designated previously in  
17   preparation for this deposition whether this document  
18   was sent out by T. J. Walker.

19           MS. McGARRY:  Well let me make something  
20   clear, Ms. Wivell.  Mr. Wilson has not reviewed each  
21   of the over 800 documents that you predesignated for  
22   this deposition.

23           MS. WIVELL:  I did not predesignate 800  
24   documents, ma'am.

25           MS. McGARRY:  Yes, you --

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1 MS. WIVELL: I --

2 MS. McGARRY: -- designated everything that  
3 had been previously marked as an exhibit, which is  
4 over 600, plus 224 additional documents --

5 MS. WIVELL: And of --

6 MS. McGARRY: -- plus other material.

7 MS. WIVELL: And of the 224, this was 1;  
8 correct?

9 MS. McGARRY: I don't know that off the top  
10 of my head, but I do know that there were over 800  
11 designated and that not all of them have been shown  
12 to Mr. Wilson.

13 BY MS. WIVELL:

14 Q. Sir, do you know whether these B.A.T. board  
15 guidelines for public affairs were sent out in 1982  
16 to Brown & Williamson?

17 A. I do not know. I -- I only know what's in the  
18 letter, the letter says.

19 Q. The letter demonstrates that they were;  
20 correct?

21 MS. McGARRY: Objection.

22 A. The letter says what the letter says. The  
23 letter is a letter to someone at Brown & Williamson.

24 Q. Well that someone is I. W. Hughes, the  
25 president, isn't it?

1 A. I don't know what position Dr. I. W. Hughes had  
2 at Brown & Williamson at this time.

3 Q. You have no way of knowing whether or not these  
4 guidelines were sent to Brown & Williamson; is that  
5 what you're telling us?

6 A. No, I think I have previously testified that I  
7 would conduct a review of the minutes of the board of  
8 B.A.T. Industries to determine whether the board  
9 approved these guidelines. As for the issue of  
10 whether they were sent out subsequently, I just  
11 simply don't know the answer.

12 Q. Well in 1982 -- I'm sorry, strike that.

13 Would you turn to the page that ends with Bates  
14 number 236. At the top it is headed "B.A.T BOARD  
15 GUIDELINES, SMOKING ISSUES, PART 1 ASSUMPTIONS";  
16 correct?

17 A. Correct.

18 Q. Now, the reference to "B.A.T. BOARD," is that  
19 the way the B.A.T. Industries board is referred to?

20 A. I think it must depend on the context. I --  
21 sometimes I'm sure it is referred to as that.  
22 Sometimes I'm sure it's referred to as B.A.T.  
23 Industries.

24 Q. All right. But I'm trying to determine whether  
25 you believe looking at this that this refers to

1 B.A.T. Industries or to the BATCO board.

2 A. I simply have no -- no knowledge. I wasn't in  
3 the company in 1982. I don't know how the company  
4 was referred to generally by people in the company in  
5 1982. I don't know how people in the company  
6 referred to BATCO in 1982, and I simply don't know  
7 what was in the mind of the person who wrote or the  
8 people who wrote this document.

9 Q. Would you turn to the page that ends with 249.  
10 Do you see there a reference 3.3?

11 A. Yes.

12 Q. 3.3.

13 A. Yes, I do, yes.

14 Q. And there it says "It is essential that, on  
15 Smoking Issues, the industry speaks with one voice";  
16 correct?

17 A. That's what it says.

18 Q. And do you understand, speaking as B.A.T.  
19 Industries' representative here today, that it was  
20 essential that on smoking issues the tobacco industry  
21 speak with one voice?

22 A. It was -- in 1980 --

23 In 1982 I simply don't know.

24 Q. And you have no information that would  
25 contradict what's written there, do you, sir?

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1 A. I have no information which will either confirm  
2 or contradict what's written there.

3 Q. Sir, would you turn to the page that ends with  
4 Bates number 256. There is a reference to 5.1;  
5 correct?

6 A. Yes.

7 Q. It says "If governments indicate their intention  
8 to employ punitive taxation in order to increase  
9 prices and reduce cigarette consumption, this should  
10 be strongly resisted for the following reasons";  
11 correct?

12 A. That's what it says.

13 Q. And it was B.A.T. Industries policy in 1982 to  
14 resist increases -- governmental increases in  
15 taxation on cigarettes; isn't that true?

16 A. I simply have no knowledge about the matter.

17 Q. You have no knowledge to refute what's written  
18 here, do you, sir?

19 A. I have no knowledge to confirm or refute what is  
20 written here.

21 Q. Will you find out whether these public affairs  
22 guidelines were adopted by B.A.T. Industries, please,  
23 and report back.

24 A. I will certainly make a diligent inquiry to see  
25 what I can establish.

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1 Q. And you'll try and find out that answer and  
2 report back tomorrow?

3 A. Yes, I will do -- do what I can.

4 Q. Will you also find out whether or not this  
5 document was sent by B.A.T. Industries to Brown &  
6 Williamson in 1982?

7 A. I will see what I can do to find out the answer  
8 to that.

9 Q. What position did T. J. Walker have in 1982?

10 A. The name doesn't mean anything to me at all. I  
11 don't know who T. J. Walker is. I certainly don't  
12 think he -- well, I don't recall any director of  
13 B.A.T. Industries having that name --

14 Q. Will you --

15 A. -- and certainly not a corporate secretary.

16 Q. Will you find out who T. J. Walker was and  
17 report back?

18 A. I will do what I can, yes.

19 Q. Sir, it was the intention of Sir Patrick Sheehy  
20 while he was chairman of B.A.T. Industries that  
21 policies adopted by B.A.T. Industries be complied  
22 with, wasn't it, sir?

23 A. I don't know what Sir Patrick Sheehy's intention  
24 was. I can't speak for Sir Patrick Sheehy's mind.

25 Q. Well have you reviewed the files of Sir Patrick

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1 Sheehy in preparation for this deposition?

2 A. Could you be specific, please.

3 Q. Have you reviewed any of Sir Patrick Sheehy's  
4 files in preparation for this deposition?

5 A. I haven't reviewed Sir Patrick Sheehy's files in  
6 preparation for this deposition. I may have -- just  
7 no, not to my recollection.

8 (Plaintiffs' Exhibit 625 was marked  
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as  
12 Plaintiffs' Exhibit 625, this is a letter from  
13 Patrick Sheehy to Mr. E. A. A. Bruell dated  
14 September 21st, 1987; right?

15 A. Yes.

16 Q. And at the time Patrick Sheehy was chairman of  
17 B.A.T. Industries, wasn't he?

18 A. Yes, he was.

19 Q. And this letter is written on his stationery as  
20 chair of B.A.T. Industries P.L.C.?

21 A. It is, yes.

22 Q. Have you seen this letter before, sir?

23 A. I have not.

24 Q. Would you turn to the second page. Would you  
25 read the first paragraph to yourself.

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1 (Witness reviews Plaintiffs' Exhibit 625.)

2 A. If you're going to ask me questions on this  
3 document, may I --

4 Q. Fine, read it.

5 A. -- take time, please, to read the whole.

6 (Witness continues reviewing Plaintiffs'  
7 Exhibit 625.)

8 Q. You've read the document?

9 A. Yes.

10 Q. Now Exhibit 6 -- 625 talks in part about  
11 policies established by B.A.T. Industries, doesn't  
12 it, sir?

13 (Discussion off the stenographic record.)

14 BY MS. WIVELL:

15 Q. Exhibit 625 refers to policies adopted by the  
16 group; correct?

17 A. There's a reference to flagrant breaches of  
18 group policies.

19 Q. And, sir, Sir Patrick Sheehy in this document  
20 identifies the importance of compliance with group  
21 policy, doesn't he?

22 A. Sir Patrick Sheehy emphasizes the importance of  
23 compliance and also emphasizes the importance of the  
24 chairmen and chief executives of operating groups  
25 reviewing existing policies to satisfy themselves of

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1 their adequacy and appropriateness in the current  
2 business environment in which they operate.

3 Q. And in fact, he says specifically, quote, "But  
4 to have a policy on such an issue which is ignored or  
5 neglected may cause far greater damage to the  
6 reputation of the Group"; correct?

7 A. He does say that, yes.

8 Q. And he goes on to say "Compliance procedures  
9 must therefore be given equal emphasis to the  
10 formation of the policy itself"; right?

11 A. He does say that, yes.

12 Q. And Sir Patrick Sheehy here is basically  
13 expressing an attitude which exists today at B.A.T.  
14 Industries; right?

15 MS. McGARRY: Objection.

16 A. If you're talking about the sentence "Compliance  
17 procedures must therefore be given equal emphasis to  
18 the formation of the policy itself," I don't think  
19 that would be inconsistent with the current position  
20 in B.A.T. Industries.

21 Q. Now, Sir Patrick then asked all chairmen and  
22 chief executive officers of operating companies to  
23 review existing policies; right?

24 A. Yes.

25 Q. And they --

1           He also asked that they review them with -- to  
2   satisfy themselves of the adequacy of the policy and  
3   the appropriateness of the current business  
4   environment in which they operate; right?

5   A.   To satisfy themselves of their adequacy and  
6   appropriateness in the current business environment  
7   in which they operate.

8   Q.   He also directed that the chairmen and chief  
9   executive officers of the operating group review the  
10   adequacy of the procedures to monitor and ensure full  
11   compliance with those procedures?

12   A.   With those policies.

13   Q.   With those policies; right?

14   A.   Yes.

15   Q.   And in fact, that was carried out, wasn't it?

16           MS. McGARRY:  Objection.

17   A.   I have no knowledge.

18   Q.   You have no knowledge that it wasn't carried  
19   out; right?

20   A.   I have no knowledge that it was carried out or  
21   that it wasn't carried out.

22           MS. McGARRY:  Please don't interrupt the  
23   witness.

24           Could I also ask you.  I've been through this a  
25   couple times.  I just am unable to find this document

1 among the 800 plus on the predesignation list.

2 MS. WIVELL: Well let's not be cute.

3 MS. McGARRY: Can you just show me where it  
4 is?

5 MS. WIVELL: Let's not be cute here.

6 There's not 800 numbers on that list.

7 MS. McGARRY: Is it your position that in  
8 the future when you say, "I'm predesignating  
9 everything that's been marked as an exhibit before,"  
10 we can ignore that part of your predesignation and  
11 ignore those 600-plus documents?

12 MS. WIVELL: Ma'am, the designation is what  
13 the designation is.

14 MS. McGARRY: Right.

15 BY MS. WIVELL:

16 Q. Now, sir --

17 MS. McGARRY: Can you show me where on that  
18 designation this document is because you're using  
19 it?

20 MS. WIVELL: You can look for it yourself.

21 MS. McGARRY: I've looked for it.

22 Mr. Pultman's looked for it. We can't find it.

23 You're not using this for impeachment. I'm not going  
24 to let him answer any more questions unless you show  
25 me where this document is on the predesignation list

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1 right now.

2 MS. WIVELL: Ma'am, go ahead and look for  
3 it, if you'd like. I'm not going to take my time,  
4 which is supposed to be devoted to questioning, to  
5 responding to your inquiries.

6 MS. McGARRY: We're going to stop questions  
7 on this document now. At a break if you can find it  
8 for me and show it to me, I'll let Mr. Wilson resume  
9 answering questions on this document.

10 BY MS. WIVELL:

11 Q. Now, sir, flagrant violations of group policy  
12 were to be dealt with through discipline; correct?

13 MS. McGARRY: Objection, vague as to time.

14 A. I -- sorry, I'm not sure I understand the -- the  
15 question. Are we talking about a specific document  
16 or a specific --

17 Q. Well, are flagrant violations of B.A.T.  
18 Industries policy to be dealt with through  
19 discipline?

20 MS. McGARRY: At this time?

21 A. At this time?

22 Q. Yes.

23 A. Well I think we addressed this before lunch  
24 today when we looked at the statement of business  
25 conduct, which talks about the possibility of

1 disciplinary sanctions. It says disciplinary  
2 sanctions may be imposed.

3 Q. Now Sir Patrick Sheehy in this letter said  
4 "Flagrant breaches of Group policy should be a  
5 disciplinary matter and employees should be in no  
6 doubt that steps will be taken which may extend to  
7 termination of employment if their actions put at  
8 risk the reputation of a Group company." Was that  
9 the policy in 1987?

10 MS. McGARRY: I instruct Mr. Wilson not to  
11 answer at this time, until such time as I can be  
12 corrected in my belief that the document was not  
13 predesignated and is not being used for impeachment.

14 MS. WIVELL: The document was  
15 predesignated, ma'am. You can find it on the list.  
16 Feel free.

17 BY MS. WIVELL:

18 Q. Now, sir, let me ask you. In 1987 was it the  
19 policy of B.A.T. Industries that flagrant breaches of  
20 group policy would be a disciplinary matter and that  
21 employees would be -- should be of no doubt that  
22 steps would be taken to terminate their employment if  
23 they violated group policy?

24 A. I do not know.

25 Q. And if the chair of B.A.T. Industries said that,

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1 you would have no basis for disagreeing, would you,  
2 sir?

3 MS. McGARRY: Objection.

4 A. I have no basis for -- for disagreeing or  
5 agreeing.

6 Q. Well, sir, if the chair of B.A.T. Industries  
7 says something concerning the interpretation of group  
8 policy, you would consider that a pretty definitive  
9 statement, wouldn't you, sir?

10 MS. McGARRY: Objection, calls for  
11 speculation, mischaracterizes the document.

12 A. I -- I can't interpret what was in the mind of  
13 the chairman of B.A.T. Industries, and I think, if I  
14 may, that to say that -- to imply, as I think is  
15 really what's happening here, that the chairman of  
16 B.A.T. Industries were to give orders for the  
17 dismissal of employees in an operating company  
18 because they may have said something that was  
19 contradictory to a policy of B.A.T. Industries is  
20 somewhat fanciful. B.A.T. Industries doesn't take  
21 hiring and firing decisions about the employees of  
22 operating companies. It's not -- it's not -- it's  
23 not what it's about.

24 Q. Well have you ever talked with Sir Patrick  
25 Sheehy about his interpretation of B.A.T. Industries'

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1 policy?

2 A. I don't have any specific recollection of having  
3 such -- had such a discussion with Sir Patrick  
4 Sheehy, no.

5 Q. And as secretary of B.A.T. Industries today,  
6 company secretary, would you feel that you have the  
7 authority to disagree with the chairman of B.A.T.  
8 Industries concerning his interpretation of group  
9 policy?

10 MS. McGARRY: Objection, calls for  
11 speculation. You may answer.

12 A. Sorry, could you read the question back to me,  
13 please.

14 Q. Certainly. As secretary of B.A.T. Industries,  
15 would you feel you have the authority to disagree  
16 with the chairman of B.A.T. Industries concerning his  
17 interpretation of group policy?

18 MS. McGARRY: That was today.

19 A. If the chairman of B.A.T. Industries took a view  
20 as to what the policy meant which was contradictory  
21 to my view, well, the chairman of B.A.T. Industries  
22 clearly has more authority than I do.

23 Q. And you'd accede to his interpretation of group  
24 policy, wouldn't you, sir?

25 A. I think if there were a disagreement between the

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1 chairman of B.A.T. Industries and myself as to the  
2 interpretation of a policy, that would be the matter  
3 for some considerable discussion and not just between  
4 myself and the chairman.

5 Q. But in the long run, it's a good bet his view  
6 would prevail, wouldn't it?

7 A. I'm -- I'm afraid that's speculative and  
8 hypothetical. I really can't tell you.

9 Q. You really can't?

10 MS. McGARRY: I think that question has  
11 been answered. I object to the sarcasm. You may ask  
12 another question.

13 Q. You --

14 You're telling us as you sit here today you  
15 really can't tell us if you had a disagreement with  
16 the chairman of B.A.T. Industries who would prevail?

17 MS. McGARRY: That wasn't the question, and  
18 the question you asked before has already been  
19 answered.

20 A. I've told you that if the chairman and I  
21 disagreed about the interpretation of a policy  
22 statement, that it's likely to be the subject of  
23 considerable discussion not merely between myself and  
24 the chairman but between other people in the  
25 organization. I have no doubt it's something the

1 chief executive would take an interest in.

2 Q. And Ms. McGarry told us that was an entirely  
3 different question than the one I just asked, so let  
4 me ask my question again.

5 Are you telling us as you sit here today that if  
6 you had a disagreement with the chairman of B.A.T.  
7 Industries, that you don't know who would prevail?

8 MS. McGARRY: Objection, overbroad. It's  
9 unclear to what the matter of the disagreement is.

10 A. It must depend on what the nature of the issue  
11 is.

12 MS. WIVELL: Mr. LaBorde, could you get out  
13 Exhibit 480.

14 (Plaintiffs' Exhibit 480 was handed  
15 to the witness.)

16 BY MS. WIVELL:

17 Q. Sir, showing you what's previously been marked  
18 as Plaintiffs' Exhibit 480, I would like you to take  
19 a look at the page -- the third page of the  
20 document. Well I'm sorry, take a look at the second  
21 page of the document to begin with.

22 According to the second page, this is a --

23 A. Sorry, could I just ask you, please, to give me  
24 the relevant Bates number so I know which page you're  
25 referring to.

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- 1 Q. The page that ends with Bates number 157.
- 2 A. Yes.
- 3 Q. According to this document, it is a B.A.T.
- 4 Industries organizational chart; right?
- 5 A. This page is an index to an organization chart.
- 6 Q. All right. And if we look at sheet number one,
- 7 that is the outline for the organization of B.A.T.
- 8 Industries P.L.C.; correct?
- 9 A. That's what it purports to be, yes.
- 10 Q. All right. Now it shows the organization at the
- 11 time when Patrick Sheehy was chair; correct?
- 12 MS. McGARRY: Object, overbroad. You may
- 13 answer.
- 14 A. It shows the organization of B.A.T. Industries
- 15 at the -- I presume at the time of this document. I
- 16 don't actually know the date of this document, but it
- 17 purports to show Sir Patrick Sheehy as the chairman
- 18 of B.A.T. Industries at the date of this document. I
- 19 can't actually identify the date of this document. I
- 20 don't know whether you can help me with that.
- 21 Q. Well actually that's why I got the document. I
- 22 was hoping that you would be able to help me. We
- 23 know that Patrick Sheehy was chair between 1982 and
- 24 19 --
- 25 A. '95.

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1 Q. -- '95, so this document would fall within that  
2 period of time; right?

3 A. Yes, it would.

4 Q. All right. Now this document also shows that

5 E. A. A. Bruell was a member of the board of B.A.T.

6 Industries; correct?

7 A. That's what it indicates, yes.

8 Q. All right. Now there is a line going down from

9 the box around B.A.T. Industries P.L.C. to the

10 Chairman's Policy Committee; correct?

11 A. Yes, there is, yes.

12 Q. All right. And that is the committee that was

13 the forerunner of the CEC; right?

14 A. Yes, that's right.

15 Q. Well, isn't that what you testified to this

16 morning, sir?

17 A. Yes.

18 MS. McGARRY: He just said "that's right."

19 A. I think I -- I just -- I just said "that's

20 right."

21 Q. Oh, I'm sorry. I thought you said, "I guess

22 that's right."

23 A. No, I -- I said, "Yes, that is right." Yes,

24 that's --

25 Q. I beg your pardon. I'm sorry. I have a little

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1 hearing problem.

2 Is there anything about this document and the  
3 names that fit in the box that help you date it?

4 A. Yes. The -- the membership of the board,  
5 Weinberg, Lipworth, these people had certainly  
6 retired from the board by about 1991. I think  
7 Weinberg and Lipworth may have retired in 1990.

8 Q. And --

9 A. So it's certainly before 1991.

10 Q. Now that line that goes down from the box around  
11 board of B.A.T. Industries to the Chairman's Policy  
12 Committee and then goes down to the bottom of the  
13 page, that would be a reporting line; correct?

14 A. I assume that's the -- the case. It would be  
15 consistent, if I may recall testimony this morning,  
16 concerning the structure of the delegated authority  
17 where we saw that the certain references would be  
18 required to be made to the CEC or the Chairman's  
19 Policy Committee, as it once was, and from thence to  
20 the board of B.A.T. Industries.

21 THE REPORTER: Off the record, please, to  
22 change tape.

23 (Recess taken.)

24 BY MS. WIVELL:

25 Q. All right, sir. Going back to our discussion

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1 about 480, have you any other way that helps you date  
2 this document?

3 A. Yes. In fact, the -- the reference to the  
4 secretary there, I. M. Macinnes, Ian Macinnes, he  
5 ceased to be secretary of the company in  
6 approximately 1987 or '88, so this document certainly  
7 won't be later than 1988.

8 Q. All right. Now I notice that there is no  
9 reference on here to the Tobacco Strategy Review  
10 Team; right?

11 A. I can't see any reference here to the Tobacco  
12 Strategy Review Team.

13 Q. Now that doesn't mean it didn't exist; right?

14 A. I -- I just don't know. I don't know when the  
15 Tobacco Strategy Review Team came into existence.

16 Q. All right. Well, sir, you know that the Tobacco  
17 Strategy Review Team was a committee set up by the  
18 chairman of B.A.T. Industries?

19 MS. McGARRY: Objection, misstates the  
20 prior testimony.

21 A. The -- I don't know who established the Tobacco  
22 Strategy Review Team, and it wasn't a committee. It  
23 was a Tobacco Strategy Review Team, as the name  
24 says. It wasn't a committee of B.A.T. Industries.

25 Q. All right. Well let me ask you this: It was a

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1 group set up by the chair of B.A.T. Industries,  
2 wasn't it?

3 MS. McGARRY: Objection, asked and answered  
4 this morning.

5 A. It was a team, and I don't know who it was  
6 established by.

7 Q. You've read Martin Broughton's testimony about  
8 that, haven't you?

9 A. I have read Martin Broughton's deposition in  
10 this matter.

11 Q. And you know that he testified that it was a  
12 group that was set up by the chair of B.A.T.  
13 Industries, Sir Patrick Sheehy?

14 A. I -- I can't recall specifically whether he said  
15 that.

16 Q. All right. Now, the Tobacco Strategy Review  
17 Team, you -- you have reviewed notes of that group,  
18 haven't you, sir?

19 A. I'm sorry, can you clarify that --

20 Q. All right.

21 A. -- when you say "notes."

22 Q. Well you understand that there are minutes of  
23 the meetings of the Tobacco Strategy Review Team.

24 A. I understand minutes have been kept of the  
25 Tobacco Strategy Review Team, yes.

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1 Q. And sometimes under the British terms those are  
2 called notes; right?

3 A. I'm not familiar with the use of "notes" as  
4 opposed to "minutes."

5 Q. Okay, fair enough. We would agree that when the  
6 Tobacco Strategy Review Team met, minutes were kept?

7 A. I believe that to be the case.

8 Q. You've reviewed them, haven't you?

9 A. I haven't reviewed the minutes of the Tobacco  
10 Strategy Review Team. I was not secretary to the  
11 Tobacco Strategy Review Team, never have been. I've  
12 never been a member of the team.

13 Q. Never went to any of its meetings?

14 A. Never went to any of its meetings, never  
15 reviewed its minutes.

16 Q. But you have filed an affidavit in the state of  
17 Pennsylvania about that group, haven't you?

18 A. Oh, I -- yeah, I -- I believe -- I -- I simply  
19 can't remember. I said this morning I filed lots and  
20 lots of affidavits. It's almost -- it's not  
21 inconceivable that I mentioned the Tobacco Strategy  
22 Review Team.

23 Q. All right. And what did you do to learn about  
24 the Tobacco Strategy Review Team in preparation for  
25 signing those affidavits?



1 A. I would have spoken with those responsible,  
2 those involved with the Tobacco Strategy Review Team  
3 or would have spoken to the secretary, the person who  
4 would have been secretary to the -- the Tobacco  
5 Strategy Review Team.

6 Q. Who was the secretary to the Tobacco Strategy  
7 Review Team?

8 A. I don't know who was -- who -- who always was  
9 the secretary to the Tobacco Strategy Review Team,  
10 but certainly at one point in time the group planning  
11 manager, head of planning, was certainly, I believe,  
12 the secretary to the Tobacco Strategy Review Team.

13 Q. Who was that?

14 A. Well I say I don't know at all particular  
15 times. I mean, the current head of group planning is  
16 Hilary Barton, and her predecessor was Dr. Salter.

17 Q. But, sir, you testified, "I would have spoken  
18 with those responsible," and "those involved with the  
19 Tobacco Strategy Review Team or would have spoken to  
20 the secretary," and I'm asking who is that secretary  
21 that you were referring to in your answer.

22 A. I believe I spoke to Hilary Barton.

23 Q. And Hilary Barton was the secretary to the  
24 Tobacco Strategy Review Team?

25 A. I'm -- I think -- I think so, yes, of the

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1 Tobacco -- yes, I think she was the secretary to the  
2 Tobacco Strategy Review Team.

3 MS. McGARRY: Maybe if you show Mr. Wilson  
4 the affidavit you're referring to, that would help  
5 him remember who he checked with to get the  
6 information in that affidavit.

7 Q. Did you in preparation for signing that  
8 affidavit read any of the minutes of the Tobacco  
9 Strategy Review Team?

10 A. I don't recall having read any minutes of the  
11 Tobacco Strategy Review Team. I should also say in  
12 connection with the affidavits that I would have  
13 consulted with counsel.

14 Q. Now you said you also spoke to those  
15 individuals -- or I'm sorry.

16 You said, "I would have spoken with those  
17 responsible, those involved with the Tobacco Strategy  
18 Review Team or" I "would have spoken to the  
19 secretary ...." Who were the individuals involved  
20 with the Tobacco Strategy Review Team that you spoke  
21 with?

22 MS. McGARRY: Objection. He didn't say he  
23 did speak. He said that he would have. If you show  
24 him the affidavit, I think it would go a long way to  
25 helping him reconstruct what, if anything, he did.

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1 A. I -- I just simply -- you know, I simply don't  
2 know. I mean, who was -- are you saying -- are you  
3 asking me who was responsible for the Tobacco  
4 Strategy Review Team?

5 Q. No, I'm asking you who you have talked to about  
6 the Tobacco Strategy Review Team.

7 A. I think I've testified that I spoke to the --  
8 Hilary Barton, who I think was the secretary of the  
9 Tobacco Strategy Review Team, and I would have --  
10 I've spoken to counsel. Certainly I've spoken to  
11 counsel in connection with my affidavit.

12 Q. All right. And who else did you speak to who  
13 was involved with the Strategy -- Tobacco Strategy  
14 Review Team?

15 MS. McGARRY: You just only give what you  
16 can remember.

17 A. I --

18 MS. McGARRY: Don't --

19 A. I -- I can't remember any more. I'm sorry.

20 MS. WIVELL: I object to counsel's coaching  
21 the witness.

22 MS. McGARRY: Well your original  
23 question --

24 MS. WIVELL: That was completely  
25 inappropriate.

1 MS. McGARRY: Ms. Wivell, your original  
2 question is who would you have checked with.

3 MS. WIVELL: No, I --

4 MS. McGARRY: Now -- excuse me,  
5 Ms. Wivell. Now you said who did you speak to.  
6 He clearly doesn't recall speaking to anyone in  
7 particular, and you're turning his testimony that,  
8 well, if I was asked to give testimony on this  
9 subject in an affidavit, who would I have checked  
10 with into a specific recollection of having  
11 conversations with specific people. You obviously  
12 have the affidavit. For some reason you're refusing  
13 to show it to the witness. I'm sure if you show it  
14 to the witness, he'll remember what he did.

15 You're as well aware as I am it doesn't have  
16 anything to do with the substance of the committee or  
17 who was on it or what happened at the meetings.

18 MS. WIVELL: Actually, Counsel, I really  
19 truly object to your misstating. The question is:  
20 "And what did you do to learn about the Tobacco  
21 Strategy Review Team in preparation for signing those  
22 affidavits?" To which he responded: "I would have  
23 spoken with those responsible, those involved with  
24 the Tobacco Strategy Review Team or would have spoken  
25 to the secretary, the person who would have been" the

1 "secretary to the --" to "the Tobacco Strategy  
2 Review Team."

3 I am trying to find out who he did speak to.

4 MS. McGARRY: He said who he would have  
5 spoken to. If you want to ask if he has a specific  
6 recollection of speaking to anyone else, you may  
7 ask.

8 MS. WIVELL: Counsel, I did, and then you  
9 interrupted and coached him. I'm going to ask  
10 again.

11 BY MS. WIVELL:

12 Q. Who have you spoken to concerning the Tobacco  
13 Strategy Review Team?

14 A. I have spoken to counsel about the Tobacco  
15 Strategy Review Team and I have certainly spoken to  
16 Hilary Barton about the Tobacco Strategy Review Team,  
17 whether specifically in connection with an affidavit  
18 or otherwise, I can't say.

19 Q. Is there anyone else to whom you have spoken  
20 about the Tobacco Strategy Review Team?

21 A. Generally or specifically or --

22 Q. Specifically, sir.

23 A. I have -- I don't have a specific recollection.

24 Q. And generally who did you speak to about the  
25 Tobacco Strategy Review Team?

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1 A. Well generally to counsel or to Hilary Barton.

2 Q. And no one else?

3 A. Not to my recollection, no.

4 Q. In preparation for this deposition, did you ask  
5 to review the Tobacco Strategy Review Team minutes?

6 A. No, I did not.

7 Q. You have never read any of the Tobacco Strategy  
8 Review Team minutes?

9 MS. McGARRY: Objection, asked and  
10 answered.

11 A. I don't believe I have, no.

12 Q. And when you provided your affidavit concerning  
13 the Tobacco Strategy Review Team, it was not based on  
14 personal knowledge, was it, sir?

15 MS. McGARRY: Objection. I think you're  
16 being completely unfair when you're not showing the  
17 witness the affidavit testimony.

18 A. I -- I can't answer the question. I -- I just  
19 don't know. It would have been a result of inquiries  
20 made, information conveyed to me. I may be the  
21 company secretary of B.A.T. Industries, but the thing  
22 I think that needs to be remembered is that I don't  
23 keep in my mind every single possible fact, every  
24 possible matter of relevance to B.A.T. Industries.

25 Q. Well, sir, those minutes are available in the

1 files of B.A.T. Industries for you to review;

2 correct?

3 A. I -- I assume they are in the files of B.A.T.

4 Industries.

5 Q. Now, sir, you understand that the Tobacco

6 Strategy Review Team was a group set up by Sir

7 Patrick Sheehy, don't you?

8 MS. McGARRY: That has been asked four  
9 times, five times already. I'm directing the witness  
10 not to answer. We did it three times this morning,  
11 twice this afternoon. We're not wasting time, you  
12 asking questions over and over again because you  
13 don't like the answer. Move on.

14 MS. WIVELL: No, ma'am, you have no right  
15 to instruct this witness not to answer.

16 MS. McGARRY: You have no right to abuse  
17 the deposition by asking --

18 MS. WIVELL: I am not abusing --

19 MS. McGARRY: -- the same question six  
20 times.

21 MS. WIVELL: Oh, now it's four, five, six.  
22 Would you like to go back on the record and count,  
23 because I don't think you'll find that exact  
24 question, Counsel, and I'm going to ask it again?

25 MS. McGARRY: And I'm going to direct him

1 again not to answer. Move on.

2 BY MS. WIVELL:

3 Q. Sir, you understand that the Tobacco Strategy  
4 Review Team was a team set up by Sir Patrick Sheehy;  
5 correct?

6 MS. McGARRY: The witness has answered  
7 numerous times that he doesn't know who set it up.  
8 He's aware Sir Patrick --

9 MS. WIVELL: Nice --

10 MS. McGARRY: -- Sheehy was on it.

11 MS. WIVELL: Nice --

12 MS. McGARRY: He is not going to answer  
13 again.

14 MS. WIVELL: Counsel, that is completely  
15 inappropriate. Nice coaching.

16 BY MS. WIVELL:

17 Q. Sir, you are aware, aren't you, that Sir Patrick  
18 Sheehy set up the Tobacco Strategy Review Team?  
19 Correct?

20 MS. McGARRY: I direct the witness not to  
21 answer this question again. You may mark the  
22 record. You may call the judge if you wish.

23 MS. WIVELL: On what grounds, Counsel?

24 MS. McGARRY: Asked and answered six  
25 times.



1 MS. WIVELL: Not privilege? I just want to  
2 make sure that we are perfectly clear that you are  
3 not instructing him to answer on the grounds of  
4 privilege. Are you, Counsel?

5 MS. McGARRY: You are abusing the  
6 deposition by asking the question multiple times.  
7 You did this with Mr. Gilbey. When you can't get the  
8 answer you like, you ask it over and over and over  
9 and over again.

10 MS. WIVELL: Well I don't believe the --  
11 the question was even asked before, that precise  
12 question, Counsel. Let me ask it one more time. He  
13 can answer, and then we'll move on.

14 MS. McGARRY: No, I've given the  
15 instruction.

16 MS. WIVELL: I just want to make sure  
17 because if we have to bring him back from London, I  
18 just want the record to be clear that you are not  
19 instructing him to answer on the grounds of  
20 privilege.

21 MS. McGARRY: I am quite clear that you  
22 have this in the record already.

23 BY MS. WIVELL:

24 Q. Sir, B.A.T. Industries understands that that  
25 committee, that team, the Tobacco Strategy Review

1 Team, was set up by its chair, Sir Patrick Sheehy;  
2 correct?

3 MS. McGARRY: Mr. Wilson can only answer  
4 what he understands --

5 MS. WIVELL: No, Mr. Wilson is here on  
6 behalf of B.A.T. Industries. I want an answer to  
7 that question, and I want it now. That particular  
8 question has not been answered.

9 MS. McGARRY: Mr. Wilson doesn't know the  
10 answer. He told you that already.

11 MS. WIVELL: Then I -- I want to go off the  
12 record. I want him to find out so that he can give  
13 me an answer on behalf of B.A.T. Industries right  
14 now. I have a right under the law to have a witness  
15 who can answer that question, and if he can't, then I  
16 want the witness and I want them here now.

17 MS. McGARRY: You will be deposing Sir  
18 Patrick Sheehy. I'm sure you can ask him. You  
19 don't --

20 MS. WIVELL: I will not be deposing Sir  
21 Patrick Sheehy.

22 MS. McGARRY: Well that's your fault.

23 MS. WIVELL: Let's go off the record and  
24 you can get the answer --

25 MS. McGARRY: No.

1 MS. WIVELL: -- to that question. Yes,  
2 ma'am.

3 MS. McGARRY: He is not getting the answer  
4 now.

5 MS. WIVELL: I want to know whether B.A.T.  
6 Industries knows whether the Tobacco Strategy Review  
7 Team was set up by Sir Patrick Sheehy when he was  
8 chair of B.A.T. Industries.

9 MS. McGARRY: Do you know whether B.A.T.  
10 Industries knows the answer to that question?

11 THE WITNESS: I do not know whether B.A.T.  
12 Industries knows the answer to that question.

13 MS. WIVELL: All right. I want you --

14 MS. McGARRY: Do you know the answer to  
15 that question?

16 THE WITNESS: I do not know the answer to  
17 that question.

18 MS. McGARRY: Thank you.

19 MS. WIVELL: Fine. Then let's go on -- off  
20 the record and you can get the answer to that  
21 question; otherwise, I want a witness who can provide  
22 the answer to that question right now.

23 MS. McGARRY: Didn't Mr. Broughton give you  
24 this answer? That's what you told. You testified  
25 today to Mr. Wilson that that's what Mr. Broughton

1 told you.

2 MS. WIVELL: Then why don't --

3 MS. McGARRY: You've got the answer.

4 MS. WIVELL: Then why doesn't he go off the  
5 record and review Mr. Broughton's testimony, and if  
6 that can provide the answer, I'm deposing B.A.T.  
7 Industries here today and I would like B.A.T.  
8 Industries to answer that question.

9 MS. McGARRY: Well you have --

10 MS. WIVELL: Let's go off the record.

11 MS. McGARRY: No.

12 MS. WIVELL: Yes.

13 MS. McGARRY: Marti, you're going to go off  
14 the record until tomorrow morning because we are not  
15 researching this now. You have the CEO of B.A.T.  
16 Industries, who has personal knowledge, answered the  
17 question for you. You're taking the deposition of  
18 Sir Patrick Sheehy, if you choose to go and do your  
19 Hague Convention request correctly. Mr. Wilson --

20 MS. WIVELL: I can't --

21 MS. McGARRY: -- is not required to answer  
22 every single question you come up with today if it  
23 has nothing to do with jurisdiction. Even if you ask  
24 him things that don't have to do, the man -- no  
25 single person can know everything that happened since

1 1976, and we are not going to go --

2 MS. WIVELL: Well this person hasn't even  
3 tried --

4 MS. McGARRY: Stop interrupting me, Marti.

5 MS. WIVELL: This person hasn't even --

6 MS. McGARRY: We are not going off the  
7 record for you to get answers to every question you  
8 come up with. You've made several requests and we  
9 have tried to get information. We're trying to get  
10 other information for you, but you've asked this  
11 witness this question over and over and over again.  
12 I'm not going to let you take advantage of him.

13 We are not going to stop the deposition now.  
14 You have your answer. Mr. Broughton gave it to you.  
15 Mr. Wilson doesn't know it.

16 MS. WIVELL: I am deposing B.A.T.  
17 Industries. I don't need you screaming at me,  
18 Counsel. I think that's completely unprofessional.  
19 I want --

20 MS. McGARRY: I have to scream when you  
21 interrupt me and speak over me.

22 MS. WIVELL: Excuse me, you just  
23 interrupted me.

24 I suggest we take five minutes. You try and  
25 find out the answer to the question so that B.A.T.

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1 Industries in the form of Mr. Wilson can find out the  
2 answer to that question. Then we can move on. I  
3 think that probably --

4 MS. McGARRY: We will take five minutes.

5 MS. WIVELL: Excuse me, Counsel, can I  
6 finish?

7 MS. McGARRY: All right. Why don't you  
8 tell me when you're done, Marti.

9 MS. WIVELL: All right. Why don't we take  
10 the time. Everyone will settle down. We won't be  
11 interrupting one another. We'll try and get the  
12 answer. Then we can move on. Perhaps that's the  
13 best thing that we can do.

14 MS. McGARRY: I think the best thing, we'll  
15 take a break, and if you want to make a motion to  
16 make Mr. Wilson come back to New York so you can ask  
17 another person a question that the CEO of B.A.T.  
18 Industries already answered for you under oath, then  
19 you may make that motion.

20 MS. WIVELL: Just be clear, Counsel, that I  
21 won't be making the motion to bring him back to New  
22 York. I'll be making the motion to bring him back to  
23 Minnesota.

24 THE REPORTER: Off the record, please.

25 (Recess taken.)

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1 (Plaintiffs' Exhibit 626 was marked  
2 for identification.)

3 BY MS. WIVELL:

4 Q. Sir, before we broke, I had asked you amongst  
5 other questions whether you recalled what Martin  
6 Broughton said about who set up the Tobacco Strategy  
7 Review Team. Do you recall that general line of  
8 questioning?

9 A. I recall your general line of questioning, yes.

10 Q. All right. And have you during the break  
11 reviewed Mr. Broughton's testimony?

12 A. I have reviewed a portion of Mr. Broughton's  
13 testimony during the break.

14 Q. All right. And do you under --

15 What do you understand that his testimony was on  
16 this subject?

17 A. His testimony on this subject was that the  
18 Tobacco Strategy Review Team was established by Sir  
19 Patrick Sheehy.

20 Q. When he was chair of B.A.T. Industries; --

21 A. When he --

22 Q. -- right?

23 A. -- was chair of B.A.T. Industries, yes.

24 Q. Got to let me finish my question, sir. Thank  
25 you.

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1 And you have no information to the contrary;  
2 right?

3 A. I have no information to the contrary.

4 Q. Thank you.

5 Now you understand that there were several  
6 principal aims of the -- no, I'm sorry, strike that.

7 B.A.T. Industries knew that there were several  
8 aims of the Tobacco Strategy Review Team when it was  
9 initially established; correct?

10 A. I -- I -- I -- I -- I don't know -- I'm sorry.  
11 I don't think I understand the question. Can you --

12 Q. All right. Well one of the aims of the Tobacco  
13 Strategy Review Team when it was set up was to mount  
14 a coherent strategic thrust in tobacco among the  
15 group companies that were involved in the tobacco  
16 industry; right?

17 A. I believe that was one of the objectives of the  
18 Tobacco Strategy Review Team, but whether that was  
19 when it was initially established or subsequently, I  
20 really don't know.

21 Q. And you also understand that one of the purposes  
22 of the Tobacco Strategy Review Team was to provide  
23 effective technical and marketing cooperation between  
24 the group's tobacco companies; right?

25 A. I can't recall that specifically.

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1 Q. All right. Do you --

2 Did you understand that when it was set up, the  
3 Tobacco Strategy Review Team's purpose was to provide  
4 a unified approach on smoking issues?

5 A. Again I -- I -- I -- I simply don't know. I  
6 can't recall.

7 Q. Now, sir, you understand that when the Tobacco  
8 Strategy Review Team was initially set up, that it  
9 had just a few members; correct?

10 A. I don't know because I don't actually know when  
11 the team was established and I don't know how many  
12 members there were.

13 Q. It was established in December of 1984, wasn't  
14 it, sir?

15 A. I'm -- I really don't know. I -- I -- I just  
16 don't know.

17 Q. Well you understand that the Tobacco Strategy  
18 Review Team was enlarged in 1988; correct?

19 A. I -- I don't know that it was enlarged in 1988.

20 Q. Well did you understand that in 1988 the chief  
21 executives of the tobacco businesses from BATCO,  
22 BATUS, B.A.T. Germany and Souza Cruz were added to  
23 the Tobacco Strategy Review Team?

24 A. I don't have any specific knowledge of that.

25 Q. Would it be fair to say that as you sit here

1 today you really don't have much personal knowledge  
2 at all about the Tobacco Strategy Review Team?

3 A. Yes, it would be fair to say that.

4 Q. All right.

5 MS. WIVELL: I do not have the affidavit  
6 that Mr. Wilson filed in Pennsylvania, but I would  
7 appreciate receiving a copy of it. Could you get us  
8 a copy --

9 MS. McGARRY: In the Arch case?

10 MS. WIVELL: In the Arch case. I do not  
11 have it.

12 MS. McGARRY: I'm unable to find any  
13 affidavit in the Arch case that makes any reference  
14 to the TSRT that was filed by Mr. Wilson. That's the  
15 problem. I looked for it during the break, and I  
16 couldn't find anything.

17 BY MS. WIVELL:

18 Q. Was there an affidavit filed on behalf of B.A.T.  
19 Industries in the Arch case that concerned the  
20 Tobacco Strategy Review Team, sir?

21 A. I can't recall. I'm sorry.

22 Q. Have you read the decision dismissing -- strike  
23 that.

24 Have you read the judge's decision in the Arch  
25 case concerning B.A.T. Industries P.L.C.?

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1 A. I've read the judge's decision to dismiss B.A.T.  
2 Industries from the Arch case, yes.

3 Q. And it makes reference to facts concerning the  
4 Tobacco Strategy Review Team; right?

5 A. I can't recall. I'm sorry.

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 626, this is the Tobacco Strategy  
8 Group terms of reference and objective; correct?

9 A. The document is headed "Tobacco Strategy Group,  
10 Terms of Reference and Objectives."

11 Q. Now you understand that Tobacco Strategy Group  
12 is a name that -- I'm sorry, strike that.

13 The Tobacco Strategy Review Team name was  
14 eventually changed to the Tobacco Strategy Group,  
15 wasn't it, sir?

16 A. I believe that to be the case.

17 Q. And the terms of reference and objectives that  
18 are listed here, in that phrase "terms of reference"  
19 means what, sir?

20 A. Well first of all, can I just point out that the  
21 third paragraph of this document refers to a proposed  
22 new terms of reference and "terms of reference" is a  
23 phrase. I don't know what it means specifically in  
24 relation to this document, but my own understanding  
25 of the expression "terms of reference" would be

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1 the -- the objectives.

2 Q. So when -- when we see --

3 MS. McGARRY: Excuse me, Ms. Wivell. I  
4 just notice that this is only part of a document.  
5 This is an incomplete document. Do you have the  
6 other pages that precede this?

7 MS. WIVELL: I didn't realize it was an  
8 incomplete document. I'm sorry.

9 MS. McGARRY: Yeah, the -- the three  
10 previous pages are included -- or two or three pages  
11 are included on the -- as one document on your list.  
12 I'm sure we can get it, but this document is an  
13 attachment to something else that I think explains  
14 what this particular document is.

15 MS. WIVELL: Well I'd be more than happy if  
16 you can -- I don't have it as I sit here, but if you  
17 have a copy, I'd be happy to include it.

18 MS. McGARRY: That's more than three  
19 pages. I can give you this one copy or we can run  
20 out and have additional copies made in five minutes,  
21 if you'd like.

22 MS. WIVELL: Can we have additional copies  
23 made? I would appreciate that.

24 MS. McGARRY: That'd be great. Thank you.

25 MS. WIVELL: In the meantime can we go

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1 forward?

2 MS. McGARRY: Well --

3 MS. WIVELL: I'm not going to be asking  
4 about questions I don't have right now obviously,  
5 so --

6 MS. McGARRY: Right, but I think this  
7 document could be misconstrued without what comes  
8 before it.

9 MS. WIVELL: All right. Well why don't we  
10 do this: Let's go forward and try and take the time  
11 we have, and then if there's anything that you  
12 believe needs to be put in context, I'll be more than  
13 happy to allow you to do that.

14 BY MS. WIVELL:

15 Q. Sir, we were talking about the phrase "terms of  
16 reference," and I think you said you meant it to  
17 be -- or you thought it meant objectives; is that  
18 right?

19 A. In a general sense, I would think that's what  
20 the expression "terms of reference" -- that's what it  
21 would tend to mean to me. I don't know what it means  
22 in the context of this specific document.

23 Q. Now according to the document, the terms of  
24 reference for the original Tobacco Strategy Review  
25 Team are set out in Appendix 1; right?

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1 A. Yeah, I'm -- I'm not actually sure about this  
2 because the -- the first paragraph here talks about  
3 "The original Terms of Reference for the Tobacco  
4 Strategy Review Team, established in 1984 and last  
5 reviewed in 1988, are set out in Appendix 1," and I  
6 don't know whether Appendix 1 incorporates changes  
7 made in 1988 or whether there were any changes made  
8 in 1988 or whether they were simply reviewed in  
9 1988.

10 Q. Fine. If we turn to Appendix 1, the last page  
11 of what is now marked as Exhibit 626, --

12 A. Yep.

13 Q. -- we see that it's headed "Previous Terms of  
14 Reference"; right?

15 A. Yes, it's headed "Previous Terms of Reference."

16 Q. And it says "The Tobacco Strategy Review Team  
17 was established in December" of "1984. The terms of  
18 reference for the team were agreed as follows";  
19 right?

20 A. Yes, that's what it says.

21 Q. Now, in the United States I've not heard anyone  
22 use the term "were agreed as follows," but I have  
23 seen it in documents from various British companies.  
24 Can you explain to us what you understand the term  
25 "were agreed as follows" means.

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1 MS. McGARRY: Objection. You may answer.

2 A. Well clearly in connection with this, I'm  
3 speculating that it would suggest to me in -- in  
4 general terms that the -- the -- the objectives of  
5 the thing were agreed -- were agreed between a number  
6 of people.

7 Q. All right.

8 A. By more -- obviously by more than one person.

9 Q. Okay. And then it lists three aims of the team;  
10 right?

11 A. Yes. Well it says in the second paragraph "The  
12 principal aims ...."

13 Q. And it lists three.

14 A. Are you -- I'm not sure whether you're referring  
15 to the second paragraph or the -- the next  
16 paragraph.

17 Q. The second paragraph, sir.

18 A. The second paragraph, yes. "The principal aims  
19 of the Team will be to ensure that the Group mounts a  
20 coherent strategic thrust in Tobacco, that there is  
21 effective technical and marketing co-operation  
22 between the Group's Tobacco businesses and that there  
23 is a unified approach on Smoking Issues."

24 Q. And, sir, B.A.T. Industries understood that  
25 those were the principal aims of the Tobacco Strategy

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1 Review Team; right?

2 A. I -- I -- I -- I'm not sure I understand in this  
3 context what the question means.

4 Q. All right. Well you have no information as  
5 spokesperson for B.A.T. Industries as you sit here  
6 today that suggests those were not the aims of the  
7 Tobacco Strategy Review Team; right?

8 A. Those were not the terms of reference that the  
9 Tobacco Strategy Review Team 1984 and/or 1988. I  
10 have no knowledge as to whether that's correct or  
11 not.

12 Q. Sir, I'm --

13 MS. McGARRY: Okay.

14 Q. -- sorry. Your answer, you just said, "Those  
15 were not the terms of reference that the Tobacco  
16 Strategy Review Team 1984 and/or 1988."

17 A. I don't think I meant to say "not." I think  
18 what I meant to say -- perhaps I can correct the  
19 answer. Sorry, I may have said the -- given the  
20 wrong impression.

21 What I was trying to convey was that I -- I  
22 neither can confirm or deny that B.A.T. Industries  
23 knew that these were the terms of reference of the  
24 Tobacco Strategy Review Team in 1984 and/or 1988.

25 MS. McGARRY: I have the complete document

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1 if you want to mark that.

2 MS. WIVELL: All right. Can we -- all  
3 right. Let's go off the record.

4 THE REPORTER: Off the record, please.

5 (Discussion off the record.)

6 (Plaintiffs' Exhibit 627 was marked  
7 for identification.)

8 BY MS. WIVELL:

9 Q. Sir, I've now had the court reporter mark  
10 Exhibit 627, which begins with Bates number  
11 482100455; right?

12 A. Correct.

13 Q. Now, the pages that were marked as Exhibit 626  
14 and en -- are entitled the "Tobacco" Strat --  
15 "Strategy Group, Terms of Reference and Objectives"  
16 are actually the last three pages of what we have now  
17 marked as Exhibit 627; right?

18 A. The last four pages? Sorry, I think.

19 Q. Fair enough. They're the -- it's the last pages  
20 of what we have now marked --

21 A. Yes.

22 Q. -- as Exhibit 627; right?

23 A. Yes.

24 Q. Okay. So for -- from now on, instead of  
25 referring to Exhibit 626, we'll refer to the end of

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1 Exhibit 627. And for the record, the first page of  
2 Exhibit 627 is a memorandum to Kohnhorst, McGraw and  
3 Whitehair with cc's to Sandefur, Eckmann and Gilhert  
4 from C. L. Schoenbachler; right?

5 MS. McGARRY: Gilbert, I think.

6 MS. WIVELL: Thank you.

7 A. Yes, from -- from Carl Schoenbachler, yes.

8 Q. All right. It --

9 The first page is a memo that attaches a copy of  
10 the B.A.T. Industries tobacco division proposed  
11 objectives for, it says, "this years planning";  
12 correct?

13 A. "This years planning period."

14 Q. All right. What is the B.A.T. Industries  
15 tobacco division?

16 A. I actually don't know what this expression means  
17 in this context.

18 Q. You were with B.A.T. Industries at the time this  
19 document was written; correct?

20 A. Yes, I was employed by B.A.T. Industries at the  
21 time this document was written. I did not write the  
22 document. I don't know what the author of the  
23 document meant by the reference "BAT Industries  
24 Tobacco Division."

25 Q. Can you find out for us and report back tomorrow

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1 what the phrase "the BAT Industries Tobacco Division"  
2 as used in this document means?

3 MS. McGARRY: We'll take it under  
4 advisement.

5 Q. Sir, would you agree to do that?

6 MS. McGARRY: I said we'll take it under  
7 advisement. I don't -- I don't even know if  
8 Mr. Schoenbachler -- who he works for at the moment,  
9 so --

10 MS. WIVELL: Well I'm --

11 MS. McGARRY: -- we're going to have to  
12 determine that before we agree to do research on some  
13 document.

14 Q. Would you agree to try and find out for me and  
15 report back tomorrow, sir?

16 MS. McGARRY: I'm answering your question  
17 and I'm telling you we'll take your request under  
18 advisement.

19 MS. WIVELL: Well, sir, I -- or, ma'am, I  
20 believe that this -- that particular subject is an  
21 issue which is related to the subject matter of this  
22 jurisdiction -- of this jurisdiction deposition, and  
23 I would request that you provide the answer tomorrow  
24 or that you provide a witness who can provide the  
25 answer tomorrow, because I do believe that it relates

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1 to jurisdictional issues, to the jurisdiction of this  
2 court and, therefore, the subject matter of this  
3 deposition, and I would prefer not to have to make a  
4 motion to bring a witness back to Minnesota to answer  
5 that question.

6 MS. McGARRY: I understand your request.

7 BY MS. WIVELL:

8 Q. Sir, is the Tobacco Strategy Group still in  
9 existence?

10 A. No, not to my knowledge. No.

11 Q. When was it disbanded?

12 A. I believe either late 1995 or early 1996.

13 Q. And it was disbanded because of a reorganization  
14 of the B.A.T. Industries tobacco group companies;  
15 correct?

16 A. Well you -- it depends what you mean by the word  
17 "reorganization."

18 MS. McGARRY: I'm just going to object to  
19 the line of questioning about any period before the  
20 commencement -- I mean, I'm sorry, any period after  
21 the commencement of this litigation because obviously  
22 the time an action is brought is what's relevant for  
23 jurisdiction purposes, so I'm going to object on  
24 relevance grounds, but I'll permit the witness to  
25 answer, unless we get too far afield.

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1 MS. WIVELL: Mr. LaBorde, could you get out  
2 Exhibit 280, please.

3 (Plaintiffs' Exhibit 280 was handed  
4 to the witness.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been previously marked  
7 as Exhibit 280, this is a news release from B.A.T.  
8 Industries; correct?

9 A. Yes.

10 Q. And it talks about the formation of  
11 British-American Tobacco Company Holdings; correct?

12 A. It doesn't appear to talk about the formation of  
13 British-American Tobacco Company Holdings. It talks  
14 about a new -- what first was a new company,  
15 British-American Tobacco Holdings Limited, which is  
16 in fact incorrect.

17 Q. Are you --

18 Is it your testimony that this press release is  
19 incorrect?

20 A. It is my evidence that the expression "new  
21 company" is not an accurate, full description of the  
22 company that is referred to there. British-American  
23 Tobacco Holdings Limited was not a new company in  
24 November 1995; it was in fact incorporated in 1932.

25 Q. Would it be fair to say that at the end of 1995

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1 that British-American Tobacco Holdings was given new  
2 responsibilities by B.A.T. Industries?

3 A. Yes, I think it would be fair to say really with  
4 effect from the 1st of January 1996 it would be fair  
5 to say that.

6 Q. And B.A.T. Industries gave to British-American  
7 Tobacco Company Holdings the responsibility for --  
8 the responsibility that's outlined in Exhibit 280?

9 MS. McGARRY: Can I just have a continuing  
10 objection to the line of questioning for events that  
11 postdate the complaint?

12 MS. WIVELL: That's fine.

13 A. I -- I think since you're asking me questions  
14 about this document, I would like to read the  
15 document, please.

16 Q. Fine.

17 (Witness reviews Plaintiffs' Exhibit 280.)

18 (Discussion off the stenographic record.)

19 BY MS. WIVELL:

20 Q. You've had the opportunity to read Exhibit 280?

21 A. Yes, I have.

22 Q. Now at approximately the end of 1995, B.A.T.  
23 Industries gave British-American Tobacco Company  
24 Holdings new responsibilities that are outlined in  
25 Exhibit 280; right?

1 A. Yes, I think that's fair, a fair reflection.

2 Q. And it is at this time when B.A.T. Industries  
3 gave these new responsibilities to British-American  
4 Tobacco Company Holdings that the Tobacco Strategy  
5 Group no longer was needed; right?

6 A. I'm not sure that one follows on from the other,  
7 but it was about this time that the Tobacco Strategy  
8 Group I think ceased to exist. I think I said  
9 earlier either at the end of '95 or probably early in  
10 1996.

11 Q. And one reason it ceased to exist is that the  
12 responsibilities that the Tobacco Strategy Review  
13 Team and then when it was renamed the Tobacco  
14 Strategy Group had eventually were taken over by  
15 British-American Tobacco Holdings Limited; right?

16 A. I really don't know. All I can tell you is what  
17 the -- this document says about what the  
18 responsibilities of British-American Tobacco Holdings  
19 were to be. I don't know to what extent they  
20 mirrored, duplicated, replaced anything that the  
21 Tobacco Strategy Group may have been doing.

22 Q. All right. Would you turn to the last page of  
23 Exhibit 627, sir.

24 A. 627?

25 Q. Yes.

1 A. Yes.

2 Q. Those were the previous terms of reference for  
3 what was originally known as the Tobacco Strategy  
4 Review Team; right?

5 A. These were the previous terms of reference for  
6 the Tobacco Strategy Review Team in 1984 and possibly  
7 in 1988, as the document itself suggests. I don't  
8 know whether they were or they weren't. The document  
9 suggests they were.

10 Q. Well it says "The Terms of Reference were  
11 reviewed in" -- "in October 1988, when the membership  
12 of the Team was extended to include Chief Executives  
13 of the Tobacco businesses in BATCo, BATUS, BATIG and  
14 Souza Cruz ..."; right?

15 A. Yes, I have no reason to dispute that.

16 Q. Okay. And one of the things that the Tobacco  
17 Strategy Review Team did from 1984 on was to review  
18 the approach taken to smoking issues and consider  
19 what action needs to be taken to strengthen this  
20 approach or to resolve any inconsistencies; correct?

21 A. That is what paragraph little (c) of the  
22 Appendix 1 says.

23 Q. And we know from looking at Exhibit 280 that the  
24 function of British-American Tobacco Company Holdings  
25 as of essentially the 1st of January 1996 was or

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1 included the management of consumer and regulatory  
2 affairs, including smoking issues, marketing and  
3 consumer freedoms and excise; correct?

4 A. One of the functions of the board of  
5 British-American Tobacco Holdings was as you have  
6 described it, amongst I think at least seven or eight  
7 other specified functions, the most important one of  
8 which I believe to be the achievement of the vision  
9 of becoming the world's number-one tobacco business.

10 Q. But also among the stated responsibilities for  
11 the board of British-American Tobacco Companies  
12 Holdings, according to Exhibit 280, was the  
13 management of consumer and regulatory affairs,  
14 including smoking issues, marketing and consumer  
15 freedoms and excise; right?

16 A. Yes, the board -- it says the board was  
17 responsible for delivering superior financial  
18 performance to B.A.T. Industries through words you've  
19 just mentioned --

20 Q. All right. And you understand --

21 A. -- amongst -- sorry, if I --

22 Q. I'm sorry.

23 A. I'm sorry to interrupt you. If I may just  
24 continue my answer, amongst the other items  
25 specified.

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1 Q. And, sir, you understood that -- or sorry,  
2 strike that.

3 You know that from 1984 until approximately the  
4 beginning of January of 1996 the Tobacco Strategy  
5 Review Team had the responsibility to review the  
6 approach taken to smoking issues for the tobacco  
7 group companies for B.A.T. Industries; correct?

8 A. Could you just read that back to me, please.

9 Q. Certainly. From 1984 until approximately the  
10 beginning of January 1996, the Tobacco Strategy  
11 Review Team had the responsibility to review the  
12 approach taken to smoking issues for the tobacco  
13 group companies of B.A.T. Industries?

14 A. I actually don't -- I don't know that to be --  
15 to be the case. What I have said before and what  
16 is -- what is contained within the documents is that  
17 the Appendix 1 to Exhibit 627 or the Appendix 1 of  
18 26 -- Exhibit 267 refers to terms of reference of the  
19 Tobacco Strategy Review Team in 1984 and/or possibly  
20 1988. Part of the exhibit is a -- a series of  
21 proposed objectives. I'm not sure proposed  
22 objectives -- objectives for what, and I don't know  
23 from the documentation what the terms of reference  
24 for the Tobacco Strategy Group were after 1988. They  
25 may, for all I know, have changed, or in fact after

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1 the date of this document -- there's nothing in the  
2 document to tell me what the objectives were after  
3 1988, although it's possible they continued to be as  
4 they're set out in Appendix 1, so that may have been  
5 the position up to May 1994. I certainly couldn't  
6 say what the position was post 1994.

7 Q. It would be fair to say, however, that from 1984  
8 until 1988 the Tobacco Strategy Review Team had as  
9 one of its objectives the review of smoking issues on  
10 behalf of the B.A.T. Group companies; correct?

11 A. Can you read the question back to me. I'm  
12 sorry.

13 Q. Okay. It would be fair to say that from 1984  
14 until 1988 the Tobacco Strategy Review Team had as  
15 one of its objectives the review of smoking issues on  
16 behalf of the B.A.T. Group companies?

17 A. The -- the objectives stated in the terms of  
18 reference, Appendix 1, are the review of the approach  
19 being taken to smoking issues and to consider what  
20 action needs to be taken to strengthen this approach  
21 or to resolve any inconsistencies, which suggests  
22 that the -- any inconsistencies, you know,  
23 presumably -- or I -- I just don't know. I mean, I  
24 don't know whether this was to the exclusion of  
25 the -- the operating groups themselves, whether they

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1 were -- I -- I just don't know.

2 Q. Well we know from the second paragraph of the  
3 document that the aims of the team were to ensure  
4 that the group mounted a coherent strategic thrust in  
5 tobacco, that there is effective technical and  
6 marketing cooperation between the group's tobacco  
7 businesses and that there is a unified approach on  
8 smoking issues; right?

9 A. It says that, yes.

10 Q. And I guess what I'm trying to get to is: You  
11 understand that it was the responsibility at least  
12 between 1984 and '88 of the Tobacco Strategy Review  
13 Team to be responsible for a unified approach on  
14 smoking issues for all of the B.A.T. Industries  
15 tobacco companies?

16 A. I -- I -- I just don't know whether it was on  
17 behalf of all the tobacco companies. All I can say  
18 is what the words say and that there is a unified  
19 approach on smoking issues. I'm not trying to be  
20 difficult about this. I -- I can't say any more than  
21 what the actual document says.

22 Q. Okay, all right. Now if we turn to the page of  
23 Exhibit 627 that ends with Bates number 459 --

24 A. Yes.

25 Q. -- we see that there were proposed new terms of

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1 reference for the Tobacco Strategy Group as of 1994;  
2 right?

3 A. Yes, "Proposed new Terms of Reference for  
4 discussion at the TSG meeting on 11th" of "May 1994  
5 are set out below," yes.

6 Q. All right. Sir, were those proposed objectives  
7 adopted?

8 A. I have no knowledge.

9 Q. How would you find out the answer to that  
10 question?

11 A. I would make inquiries of the person who was the  
12 secretary of the TSG.

13 Q. And that would be Hilary Barton?

14 A. I believe that to be Hilary Barton, yes.

15 Q. All right. Would you do so and report back?

16 MS. McGARRY: We'll take it under  
17 advisement.

18 MS. WIVELL: Well again I would like to  
19 have the answer to that question so we don't need to  
20 make a motion -- or I would like a witness who can  
21 answer that question. If you want to bring Hilary  
22 Barton over, I'd be happy to take her deposition or  
23 we could arrange to take it by phone, but I would  
24 appreciate a witness who would -- could respond to  
25 that question.

1 MS. McGARRY: I hear what you're saying.

2 BY MS. WIVELL:

3 Q. Did you understand, sir, that from 1988 to 1994  
4 that the Tobacco Strategy Review Team, whether under  
5 that title or whether it was called the Tobacco  
6 Strategy Group, was responsible for the strategy  
7 objectives, policies and priorities of the B.A.T.  
8 Industries tobacco business?

9 A. I -- I -- I have no knowledge. This is a  
10 proposed terms of reference, so I do not know what  
11 was adopted at the meeting and I -- I can't be more  
12 helpful. I'm sorry.

13 Q. You understand -- I'm sorry, strike that.

14 The Tobacco Strategy Review Team was set up  
15 through the Chairman's Policy Committee, wasn't it,  
16 sir?

17 A. I don't think I understand the question, "set up  
18 through the Chairman's Policy Committee."

19 Q. Well let me do it this way.

20 (Discussion off the stenographic record.)

21 Q. Sir, showing you what's previously been marked  
22 as Plaintiffs' Exhibit 522, this is a document from  
23 Patrick Sheehy dated September 9th, 1988 with  
24 enclosures; correct?

25 A. It appears to be, yes.

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1 Q. And on the first page there you see the title's  
2 "Tobacco Strategy Review Team" with a circle around  
3 it; correct?

4 A. I do, yes.

5 Q. Now Sir Patrick says "The main" operating "lines  
6 in the Group are between B.A.T Industries and the  
7 Operating Groups and the objectives and strategies  
8 are normally agreed through discussions between the  
9 CPC and the Operating Group concerned"; right?

10 MS. McGARRY: Objection. You misread the  
11 document.

12 A. The first few words -- the first few words are  
13 in fact "The main reporting lines," not "The main" --  
14 I'm not sure what word you used now.

15 Q. I'm sorry, let me rephrase the question.

16 Mr. Sheehy says "The main reporting lines in the  
17 Group are between B.A.T Industries and the Operating  
18 Groups and the objectives and strategies are normally  
19 agreed through discussions between the CPC and the  
20 Operating Group concerned."

21 A. That's what he says, yes.

22 Q. And the CPC is what, sir?

23 A. That would I believe be a reference to the  
24 Chairman's Policy Committee, but I -- I don't know in  
25 this context.

1 Q. Mr. Sheehy goes on to say "There are, however, a  
2 number of strategic issues which involve more than  
3 one Operating Group and in order to discuss and  
4 progress these issues the Board set up Strategy  
5 Review Teams for each of the Group's major industrial  
6 activities"; correct?

7 A. That's what it says, yes.

8 Q. Now, sir, the board that he's referring to is  
9 the B.A.T. Industries board; right?

10 MS. McGARRY: Objection. You may answer.

11 A. I -- I -- I don't know. I don't know whether  
12 he's referring to the B.A.T. Industries board or any  
13 other board.

14 Q. How would you find out whether he was referring  
15 to the B.A.T. Industries board, sir?

16 A. Well I would -- I could review the minutes of  
17 the meeting of the board of B.A.T. Industries to  
18 determine whether they contain any reference to this,  
19 and of course the alternative is that I could speak  
20 to Sir Patrick Sheehy.

21 Q. Could you try and determine the answer to the  
22 question about what board is being referred to here?

23 MS. McGARRY: We'll take it under  
24 advisement.

25 MS. WIVELL: Because I would like a witness

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1 who would -- who can answer that question, and I  
2 request that if this witness can't, that I be  
3 provided with a witness who can.

4 Q. Sir, isn't it a fact that the B.A.T. Industries  
5 board set up the Tobacco Strategy Review Team?

6 A. I think in testimony earlier today I said that I  
7 had reviewed the deposition of Martin Broughton in  
8 this matter and that Martin Broughton's deposition  
9 had stated that Sir Patrick Sheehy had established  
10 the Tobacco Strategy Review Team. Sir Patrick Sheehy  
11 was at one time the chairman of the board of B.A.T.  
12 Industries.

13 I don't -- I can't say anything beyond that.

14 Q. All right. You just don't know as you sit here  
15 whether the board approved Sir Patrick setting up the  
16 committee; is that right?

17 A. I don't know without, yeah, checking.

18 Q. All right. I would appreciate it if you'd check  
19 and report back the answer to that question.

20 MS. McGARRY: We'll take it under  
21 advisement.

22 MS. WIVELL: Well I would ask that I be  
23 provided with a witness who does know the answer to  
24 that question if you don't provide me the answer.

25 Q. Sir, have you read the first page of this

1 document or --

2 A. No.

3 Q. -- have you read the memo from Sir Patrick?

4 A. I haven't, no.

5 Q. Why don't you, please.

6 A. Okay.

7 (Witness reviews Plaintiffs' Exhibit 522.)

8 Q. Sir, have you read the first two or three pages  
9 of the document?

10 A. I have read the first two or three pages, yes.

11 Q. All right. And, sir, in 1988 the membership of  
12 the Tobacco Strategy Review Team was enlarged to  
13 include the chief operating officers of the various  
14 tobacco companies within the B.A.T. Industries Group;  
15 correct?

16 MS. McGARRY: Objection. Go ahead.

17 A. Again could you repeat the question, please.

18 Q. Certainly. In 1988 the membership of the  
19 Tobacco Strategy Review Team was enlarged to include  
20 the chief operating officers of the various tobacco  
21 companies within the B.A.T. Industries Group; right?

22 A. It says here that it will be improved by  
23 extending the membership to include the persons  
24 primarily responsible for the tobacco operations in  
25 each of the operating groups, and it lists the full

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1 membership of the team which is now proposed as  
2 Mr. Sheehy, Mr. Bruell, Mr. Bramley, Mr. Pritchard,  
3 Mr. Herter and Mr. Saboia, Dr. Salter acting as  
4 secretary.

5 Q. All right. You understood that from 1988 on in  
6 addition to the members of the B.A.T. Industries  
7 board of directors who sat on the Tobacco Strategy  
8 Review Team, that there were representatives of each  
9 of the operating companies within the B.A.T.  
10 Industries Group that were involved in the  
11 manufacture and sale of cigarettes; right?

12 MS. McGARRY: Objection.

13 A. I don't understand that. I have a -- a general  
14 recollection that certainly my time at the company  
15 when this organization was in existence that its  
16 membership included the chief executives of the major  
17 tobacco operating companies, but not all the  
18 companies in the group that manufacture and market  
19 tobacco products. So for example, it would include,  
20 I think, the chief -- I -- I can't be absolutely sure  
21 on this, but I believe it would include the chief  
22 executives of Souza Cruz and Brown & Williamson.

23 Q. And that continued until approximately the  
24 beginning of 1996; right?

25 A. I believe that to be the case.

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1 MS. WIVELL: Sir, would you like to take a  
2 break?

3 THE WITNESS: I'm happy to go on for a  
4 while longer.

5 MS. WIVELL: Oh, all right, because I --  
6 you were looking a bit uncomfortable, and I just  
7 wanted -- I thought perhaps you weren't feeling  
8 well.

9 THE WITNESS: No, I'm fine to go on for a  
10 little while.

11 MS. WIVELL: Okay, good.

12 MS. McGARRY: You know that any time --

13 THE WITNESS: Yeah, sure.

14 MS. McGARRY: -- you need a break, you can  
15 tell us.

16 MS. WIVELL: I just --

17 MS. McGARRY: Appreciate it.

18 MS. WIVELL: Yeah. Can we go off the  
19 record for a moment.

20 THE REPORTER: Off the record, please.

21 (Recess taken.)

22 (Plaintiffs' Exhibit 628 was marked  
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

1 Exhibit 628, this is a document that begins with the  
2 Bates number 109844405; right?  
3 A. Correct.  
4 Q. And it's entitled "Tobacco Strategy Review,  
5 Funding of R&D"?  
6 A. Yes.  
7 Q. All right. Did you understand that this  
8 document was submitted to the Tobacco Strategy Review  
9 Team?  
10 A. I have no understanding. I don't think I've  
11 seen this document before.  
12 Q. So as you sit here today, you just don't know  
13 one way or the other?  
14 A. I don't know. May I read the document, please,  
15 if you're going to ask me questions on it?  
16 Q. Well, let me ask you this, sir: Was the funding  
17 of R&D a subject that was the responsibility of the  
18 Tobacco Strategy Review Team?  
19 A. I'm sorry, could you say the question again,  
20 please.  
21 Q. Yes. Was funding of R&D a subject that was the  
22 responsibility of the Tobacco Strategy Review Team?  
23 A. You mean the payment, paying the costs of R&D?  
24 Q. No, I mean was the decision about what would be  
25 funded for R&D a decision of the Tobacco Strategy

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1 Review Team.

2 A. I don't believe so. I don't -- I don't know.

3 Q. All right. Was the decision about who would pay  
4 what amount of funding a decision of the Tobacco  
5 Strategy Review Team?

6 A. I -- again I don't know.

7 Q. If you were to try and find out how -- whether  
8 this document, Exhibit 628, was submitted to the  
9 Tobacco Strategy Review Team, how would you go about  
10 answering that question?

11 A. I think I would ask to see the records of the  
12 Tobacco Strategy Review Team around this time, see  
13 whether there was anything in the minutes of the  
14 Tobacco Strategy Review Team, see whether there were  
15 any backup papers which would indicate that this  
16 paper was submitted to the Tobacco Strategy Review  
17 Team.

18 Q. And if you were to try and find out whether the  
19 decision about who would pay what amount of funding  
20 was a decision of the Tobacco Strategy Review Team,  
21 how would you go about making that determination?

22 A. I'm sorry, are you talking about a specific  
23 funding or funding generally or --

24 Q. Funding generally, sir.

25 A. So -- so can you give me the question again then

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1 so I --

2 Q. Okay.

3 A. -- understand it in its context.

4 Q. Well I had asked you a little earlier whether  
5 funding decisions were made by the Tobacco Strategy  
6 Review Team, and I think you said you didn't know.

7 Would that be fair?

8 A. That would be fair, yes.

9 Q. Okay. How would you go about answering that  
10 question?

11 A. Well I suppose one of the things that I would do  
12 is to review the -- the terms of reference of the  
13 Tobacco Strategy Review Team to see what they stated  
14 as its responsibilities, and to the extent that that  
15 was in -- unhelpful or inconclusive, I would have to  
16 review the files of the Tobacco Strategy Review Team  
17 and/or speak to former members of the Tobacco  
18 Strategy Review Team.

19 MS. WIVELL: Mr. LaBorde, could you get out  
20 Exhibit 523.

21 (Plaintiffs' Exhibit 523 was handed  
22 to the witness.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as  
25 Plaintiffs' Exhibit 523, this is one of the minutes

1 of the Tobacco Strategy Review Team; correct?

2 A. It appears to be, yes.

3 Q. All right. And it --

4 It's the minutes of the tenth meeting of the  
5 Tobacco Strategy Review Team, held on the 31st of  
6 October 1988; right?

7 A. It appears to be, yes.

8 Q. Now I notice that Hilary Barton's name is not  
9 listed amongst those who were present. Am I right  
10 about that?

11 A. That would not be surprising given that Hilary  
12 Barton was not employed in B.A.T. Industries before,  
13 I believe, 1991 or 1992.

14 Q. All right. Now it refers here to Dr. R. Salter  
15 as the secretary of the Tobacco Strategy Review  
16 Team.

17 A. Yes, it does.

18 Q. Is Dr. Salter still alive?

19 A. I believe he is alive, yes.

20 Q. Have you ever spoken with him about the Tobacco  
21 Strategy Review Team?

22 A. Not to my recollection, no.

23 Q. Now, sir, the terms of reference are reviewed --  
24 or I'm sorry, strike that.

25 According to Exhibit 523, the terms of reference

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1 for the Tobacco Strategy Review Team were reviewed at  
2 this meeting; correct?

3 A. To the extent that these are accurate minutes  
4 that accurately -- minutes which accurately reflect  
5 the matters that occurred at the Tobacco Strategy  
6 Review Team meeting, then that's correct.

7 Q. All right. And according to this document, the  
8 principal aims of the team would be to ensure that  
9 the group mounts a coherent strategic thrust in  
10 tobacco, that there is effective technical and  
11 marketing cooperation between the group's tobacco  
12 businesses and that there is a unified approach on  
13 smoking issues; right?

14 A. That's what it says at item two, yes.

15 Q. All right. And the fact that it says that at  
16 item two indicates to you, sir, doesn't it, that  
17 those were objectives of the Tobacco Strategy Review  
18 Team at the time this document was written?

19 A. I think that's a fair reflection, yes.

20 Q. All right. Now, sir, I would like to go down to  
21 point number four.

22 A. At this stage if you're going to ask me  
23 questions on this document, which I've not seen  
24 before, I would like, please, the opportunity to read  
25 the document.

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1 Q. Well I'm just going to ask you right now  
2 something about point number four, so why don't you  
3 read it.

4 MS. McGARRY: Well if the witness feels he  
5 needs to read the whole document he's never seen  
6 before to answer questions, he's certainly entitled  
7 to do that.

8 THE WITNESS: Am I allowed to read this?

9 MS. McGARRY: If -- if you'd like to, you  
10 may read the whole document.

11 THE WITNESS: I would like to read the  
12 document before I answer any further questions.

13 MS. WIVELL: Well that's fine.

14 (Witness reviews Plaintiffs' Exhibit 523.)

15 A. All right.

16 Q. All right. Sir, you've had the opportunity to  
17 read the document; correct?

18 A. Yes.

19 Q. All right. Now there at point four is a  
20 reference to smoking issues; correct?

21 A. Yes.

22 Q. That's the title of a document; right?

23 MS. McGARRY: Objection.

24 A. I don't know whether it's a title of a document  
25 or not. It just says "On Smoking Issues."

1 Q. Well it says then "Mr. Bramley reported that the  
2 summary compendium would be completed in November";  
3 right?

4 A. Yes. It says that, yes.

5 Q. Now you understand that that is a document that  
6 they're referring to in these minutes, isn't it,  
7 sir?

8 MS. McGARRY: Objection, ambiguous.

9 A. I -- I -- I don't know. I -- yes, possibly.

10 Q. Well B.A.T. Industries put together a compendium  
11 on smoking issues, didn't it, sir?

12 A. I have no knowledge that B.A.T. Industries put  
13 together a document on smoking issues, a compendium  
14 on smoking issues.

15 Q. What you're saying is you -- as you sit here  
16 today, you just don't know one way or the other  
17 whether they did -- whether -- I'm sorry, strike  
18 that.

19 What you're saying is that as you sit here  
20 today, you just don't know one way or the other  
21 whether B.A.T. Industries put together a compendium  
22 on smoking issues; is that right?

23 A. I -- what I'm saying is that I don't believe  
24 B.A.T. Industries put together a compendium on  
25 smoking issues. B. -- I -- I think I should go back

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1 to some testimony I gave earlier today.

2 B.A.T. Industries is a holding company. It  
3 holds investments in a number of companies, in  
4 different businesses, at the current time tobacco and  
5 insurance/financial services. B.A.T. Industries does  
6 not itself manufacture or market tobacco products.

7 I can't speak to events in October of 1988, but  
8 I would be very surprised if B.A.T. Industries had  
9 the resources or the knowledge sufficient to put  
10 together a compendium on smoking issues. If there  
11 were a compendium on smoking issues, I would  
12 anticipate it was put together by people engaged in  
13 the tobacco companies.

14 Q. Move to strike as nonresponsive.

15 MS. McGARRY: It was certainly responsive.

16 Q. Sir, as you sit here today, you don't know one  
17 way or the other whether B.A.T. Industries ever put a  
18 compendium together on smoking issues, do you, sir?

19 MS. McGARRY: Objection, misstates the  
20 witness's prior testimony.

21 A. I -- I do not believe B.A.T. Industries put  
22 together a compendium on smoking issues.

23 Q. Well, sir, you're aware that it put together a  
24 Compendium of Epidemiological Studies, aren't you?

25 MS. McGARRY: Objection, states facts not

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1 in evidence.

2 A. I'm -- I'm not aware that B.A.T. Industries put  
3 together a compendium on -- on epidemiological  
4 issues. I am aware that there was a -- there was a  
5 compendium on epidemiological issues.

6 Q. And you understand it was put together at the  
7 direction of Sir Patrick Sheehy; correct?

8 A. I do not understand it was put together at the  
9 direction of Sir Patrick Sheehy, no.

10 Q. Well you understand it was put together with the  
11 involvement of B.A.T. Industries; right?

12 MS. McGARRY: Ambiguous, objection.

13 A. I -- I -- I think at this point I have to tell  
14 you that the -- my only knowledge about the  
15 compendium of epidemiological issues is knowledge  
16 conveyed to me by my counsel. I have no other  
17 knowledge beyond what has been conveyed to me by  
18 counsel.

19 Q. Well that's fine. You're speaking on behalf of  
20 B.A.T. Industries today, and I'm entitled to obtain  
21 knowledge from wherever you got it.

22 So you understand that there was a Compendium of  
23 Epidemiological Studies that was put together with  
24 the involvement of B.A.T. Industries P.L.C.; isn't  
25 that true?

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1 MS. McGARRY: I'm going to object. I'm not  
2 going to let the witness go into discussions that he  
3 had with counsel. If the witness has information  
4 from reviewing documents or from his work at the  
5 company, that's fine, but he isn't going to reveal  
6 conversations with counsel.

7 MS. WIVELL: Before you answer, sir, I  
8 believe that there is contrary authority to what  
9 counsel just said with regard to 30.02(f) depositions  
10 or 30.0 -- 30(b)(6) depositions, as they're known in  
11 the Federal Courts, and I believe I have a right to  
12 information from wherever it comes since I am  
13 deposing not the individual but the corporation, and  
14 I would refer you to Protective National  
15 Insurance vs. Commonwealth Insurance at 137 F.R.D.  
16 267, which notes -- or which holds that the  
17 attorney-client privilege does not apply to prevent a  
18 corp -- corporation spokesperson from testifying  
19 under Rule 30(b)(6) to facts, even if these facts  
20 were communicated to the spokesperson by the  
21 corporation's lawyers.

22 And again I would ask that I be allowed to have  
23 an answer to that question.

24 MS. McGARRY: Could you ask the question  
25 again?

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1 MS. WIVELL: Certainly.

2 BY MS. WIVELL:

3 Q. Do you understand that there was a Compendium of  
4 Epidemiological Studies that was put together with  
5 the involvement of B.A.T. Industries P.L.C.?

6 MS. McGARRY: I'm again going to instruct  
7 the witness that he may testify about information he  
8 obtained from reviewing documents with counsel in  
9 preparation for the deposition, but not to go into  
10 discussions with counsel. If there's any question  
11 about whether you need to stray into privileged areas  
12 to answer the question, we can always take a break  
13 and answer any concerns that you may have,  
14 Mr. Wilson.

15 Q. All right. And just so the record is clear, I'm  
16 just asking for facts which B.A.T. Industries knows;  
17 I'm not asking from where they came. So with that in  
18 mind, sir, let me ask my question again.

19 You understand that there was a Compendium of  
20 Epidemiological Studies that was put together with  
21 the involvement of B.A.T. Industries; isn't that  
22 true?

23 A. Could you clarify for me what you mean by  
24 "involvement," please.

25 Q. Involvement of Sir Patrick Sheehy and at least

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1 one other board member of B.A.T. Industries P.L.C.

2 MS. McGARRY: Objection to the vagueness of  
3 the term "involvement." You haven't responded to the  
4 witness's request.

5 A. I still don't understand what is meant by  
6 "involvement" in this context.

7 (Plaintiffs' Exhibit 629 was marked  
8 for identification.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as  
11 Plaintiffs' Exhibit 629, this document con -- I'm  
12 sorry. This document is Bates numbered 107319251 as  
13 its beginning Bates number; right?

14 A. Correct.

15 Q. And it concerns a Compendium of Epidemiological  
16 Studies; right?

17 A. It is headed "COMPENDIUM OF EPIDEMIOLOGICAL  
18 STUDIES."

19 Q. And it concerns a meeting held at B.A.T.  
20 Industries, Windsor House, on 27 December 1984?

21 A. It would appear to do so.

22 Q. And present at that meeting were Patrick Sheehy;  
23 right?

24 A. Yes.

25 Q. He was then chair of B.A.T. Industries P.L.C.?

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- 1 A. He was chairman of B.A.T. Industries, yes.
- 2 Q. And also present was Mr. E. E. A. Bruell, who
- 3 was at that time a director of B.A.T. Industries?
- 4 A. He was a director of B.A.T. Industries and I
- 5 believe he was also at that time the chairman of
- 6 British-American Tobacco Company, BATCO.
- 7 Q. And there also present was Dr. R. E. Thornton;
- 8 correct?
- 9 A. Correct.
- 10 Q. All right. And the Compendium of
- 11 Epidemiological Studies was discussed at this
- 12 meeting; correct?
- 13 A. Again it appears to be from the document, but I
- 14 would, please, ask to read this document. It's not a
- 15 long document, if I may just have a minute.
- 16 Q. All right. Sir, have you seen this document
- 17 before?
- 18 A. Yes, I have seen this document before.
- 19 Q. Why don't you take a moment and read it.
- 20 A. Thank you.
- 21 (Witness reviews Plaintiffs' Exhibit 629.)
- 22 A. Yeah.
- 23 Q. Now, sir, the Compendium of Epidemiological
- 24 Studies was discussed at this meeting; correct?
- 25 A. Yes, that appears to be the case.

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1 Q. All right. And, sir, you understand that the  
2 Compendium of Epidemiological Studies was drawn up  
3 under the direction of Sir Patrick Sheehy; right?

4 A. I don't see any statement in this document that  
5 suggests that it was at the direction of Sir Patrick  
6 Sheehy.

7 Q. Well, sir, do you know that?

8 A. I neither can confirm or deny it.

9 Q. But at least Sir Patrick Sheehy and one other  
10 board member were involved in producing this  
11 Compendium of Epidemiological Studies; correct?

12 A. I --

13 MS. McGARRY: Objection to the  
14 mischaracterization of the prior testimony and the  
15 vagueness of the term "involved."

16 A. I do not believe that is necessarily correct.  
17 What is shown by this note, this note of a meeting,  
18 is that Mr. Sheehy, the then chairman of B.A.T.  
19 Industries; Mr. Bruell, a director of B.A.T. --  
20 B.A.T. Industries and then chairman of  
21 British-American Tobacco Company Limited, BATCO; and  
22 a Dr. R. E. Thornton had a discussion about certain  
23 matters in reference to a draft compendium.

24 Q. And they discussed and reaffirmed the aim of the  
25 compendium, didn't they, sir?

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1 A. Point (1) of the minutes says "It was  
2 re-affirmed that the aim of the compendium was to  
3 illustrate the range of material which supported the  
4 controversy on smoking issues. 'Anomalies' would be  
5 identified but not rationalized."

6 Q. And, sir, this document was to be presented --  
7 I'm sorry.

8 The Compendium of Epidemiological Studies was to  
9 be ready for the Chairman's CAC meeting in April of  
10 1985; right?

11 MS. McGARRY: I'm sorry, I just need to  
12 look at that again.

13 Objection, mischaracterizes the document.

14 A. Could you please read back the -- the question  
15 for me.

16 Q. Sure. The Compendium of Epidemiological Studies  
17 was to be ready so it could be presented to the  
18 Chairman's CAC meeting in April of 1985; right?

19 MS. McGARRY: Same objection.

20 A. A draft of the compendium was to be ready for --  
21 a draft of the compendium was -- inverted comma,  
22 was, in quotes, "to be ready for the Chairman's CAC  
23 meeting in April 1985," close quotes.

24 Q. And the draft was presented to the Chair --  
25 Chairman's CAC meeting in April of 1985; right?

1 A. I have no knowledge of whether it was or  
2 wasn't.

3 Q. By the way, "the Chairman's CAC meeting," that  
4 refers to the B.A.T. Industries Chairman's CAC  
5 Committee; right?

6 MS. McGARRY: Objection.

7 A. I have no firsthand experience of the CAC, but  
8 my -- what knowledge I do have of the CAC was that it  
9 was an advisory conference which met periodically. I  
10 do not know how regularly. I -- possibly once every  
11 two years or possibly even annually at some stage in  
12 the past, and consisted of the directors of B.A.T.  
13 Industries and the chief executive officers/chairmen  
14 of the major operating groups of the company, not  
15 just tobacco, but financial services or whatever the  
16 main operations would have been at the time.

17 Q. And this was a committee that was put together  
18 by Sir Patrick Sheehy as chair of B.A.T. Industries  
19 P.L.C.; correct?

20 MS. McGARRY: Objection.

21 A. I don't think I said it was a committee. I  
22 think it was actually called the Chairman's Advisory  
23 Conference -- Conference.

24 Q. Well it was a conference that was put together  
25 by Sir Patrick Sheehy in his capacity as chair of

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1 B.A.T. Industries P.L.C.; correct?

2 A. I have no specific knowledge, but the  
3 suggested -- the chairman suggests that Sir Patrick  
4 Sheehy was the moving force.

5 Q. And he was the one who convened those meetings,  
6 wasn't he?

7 A. Well the CAC has not met during my tenure as  
8 secretary, and I have no direct knowledge, as I said  
9 earlier on, about the CAC.

10 Q. All right. I would appreciate -- let me say it  
11 this way. Strike that.

12 B.A.T. Industries knows that the CAC meetings  
13 were convened by its chairman, Sir Patrick Sheehy,  
14 doesn't it, sir?

15 MS. McGARRY: Objection.

16 A. I do not know what B.A.T. Industries knows.  
17 I've told you what I know. I -- I -- I do not think  
18 it's an unreasonable assumption, but I simply do not  
19 know.

20 Q. All right. I would appreciate it if you would  
21 find out and report back tomorrow so that I could  
22 have the testimony of B.A.T. Industries on this  
23 subject.

24 MS. McGARRY: We'll take it under  
25 advisement.

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1 MS. WIVELL: And again I would ask that if  
2 I don't get the answer, that I be provided  
3 immediately with another witness who is knowledgeable  
4 about that subject and who can talk about it.

5 Q. Sir, what were the purposes of the CAC?

6 A. I do not know.

7 Q. I would appreciate it if you would find out and  
8 report back so I could have B.A.T. Industries'  
9 testimony on that subject or be provided with another  
10 witness who can answer that question.

11 MS. McGARRY: I'll take your request under  
12 advisement, but I'm not sure this has anything to do  
13 with jurisdiction.

14 MS. WIVELL: I believe it does because I  
15 believe that it again shows B.A.T. Industries'  
16 involvement in the overall management of the aims  
17 and -- of the tobacco companies, including Brown &  
18 Williamson.

19 MS. McGARRY: I'm not going to have a  
20 debate with you on the record. I'm just noting my  
21 objection.

22 BY MS. WIVELL:

23 Q. Now, sir, you understand that B.A.T. Industries  
24 approved the contract under which the Compendium of  
25 Epidemiological Studies was written; right?

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1 MS. McGARRY: Objection, assumes facts not  
2 in evidence.

3 A. Excuse me, could you please read the question  
4 back.

5 Q. Yes, sir. B.A.T. Industries approved the  
6 contract relating to the Compendium of  
7 Epidemiological Studies; correct?

8 MS. McGARRY: Objection.

9 A. I have no -- first of all, I don't know which  
10 contract for the preparation of the compendium you're  
11 referring to.

12 Q. All right.

13 A. Perhaps you could help me.

14 Q. Do you understand that a contract was placed  
15 with Dr. Lee, who is referred to in this document, in  
16 order to carry out a cohort analysis of lung cancer  
17 deaths that was to be made part of the Compendium of  
18 Epidemiological Studies?

19 A. The document says "Since completion of the draft  
20 compendium in November 1984 P." -- I believe that's  
21 "W.," "P. W. Lee had completed the first phase of a  
22 two year programme of cohort analysis," stop.

23 Q. And, sir, isn't it a fact that B.A.T. Industries  
24 approved the contract under which Dr. Lee was hired  
25 to do that cohort analysis?

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1 A. I -- I do not know.

2 Q. You could find out, couldn't you, sir?

3 A. I could certainly make some investigations.

4 Q. All right. I would appreciate if you would  
5 undertake to do so and report back or, if you do not,  
6 that I be provided with a witness who has sufficient  
7 information or knowledge with regard to that topic.

8 MS. McGARRY: We'll take your request under  
9 advisement.

10 Q. Now, sir, Mr. Thornton was -- strike that.

11 Who employed Dr. Thornton in 1984?

12 A. I believe Dr. Thornton was employed by  
13 British-American Tobacco Company, BATCO.

14 Q. All right. Now he did from time to time report  
15 to B.A.T. Industries about the Compendium of  
16 Epidemiological Studies and its progress, didn't he?

17 A. As I think is evident from this document, he  
18 attended a meeting with the chairman of B.A.T.  
19 Industries to discuss the compendium.

20 Q. And among -- or I'm sorry, strike that.

21 During that discussion, plans were made for  
22 later stages in the development of the compendium;  
23 right?

24 A. I think that's a fair characterization of what  
25 the words say here, yes.

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1 Q. All right. And the people at the meeting  
2 decided that the compendium could be shown to other  
3 epidemiologists; right?

4 A. The people at the meeting agreed that it could  
5 be shown to other epidemiologists. They also agreed  
6 that it could also be considered by independent  
7 scientists. There was a reference to that effect in  
8 the little paragraph numbered (1) towards the bottom  
9 of the first page, and there is a further reference  
10 to that in paragraph (3) at the top of the second  
11 page.

12 Q. And, sir, it was also intended by B.A.T.  
13 Industries -- I'm sorry, strike that.

14 It was also intended by the people from B.A.T.  
15 Industries who in -- attended this meeting that the  
16 compendium could be shown to other tobacco companies  
17 who would be invited to join in the project on a  
18 take-it-or-leave-it basis; right?

19 A. It was agreed by those present at the meeting.

20 Q. And it was also agreed by those present at the  
21 meeting that the document would be published or used  
22 selectively in discussions with appropriate  
23 authorities; right?

24 A. It says at paragraph (4)c), "The document would  
25 then be," quotes, "'published/used,'" close quotes,

1 "selectively in discussions with appropriate  
2 authorities," then clearly following on from the what  
3 I would term peer reviews carried out by the  
4 independent scientists identified in the paragraphs  
5 that I referred to earlier from the document.

6 Q. Now, sir, you understand that this compendium  
7 was completed, wasn't it?

8 MS. McGARRY: Objection, states facts not  
9 in evidence.

10 A. I believe that the compendium was completed.

11 Q. It was also submitted to Dr. F. J. C. Roe,  
12 wasn't it, sir?

13 A. I do not know whether it was submitted to  
14 Dr. F. J. C. Roe. There is a -- a statement in this  
15 document that Dr. F. J. C. Roe's offer to comment on  
16 the compendium be accepted as soon as possible.  
17 Whether it was ever submitted to Dr. Roe, I can't  
18 presently tell you.

19 Q. What was this compendium called, sir?

20 A. I -- I really don't know. It was a com --  
21 compendium about epidemiological -- a Compendium of  
22 Epidemiological Studies, I believe, but I -- I don't  
23 know.

24 Q. Sir, this compendium was supplied to all of the  
25 tobacco companies within the B.A.T. Group, wasn't

1 it?

2 MS. McGARRY: Objection, assumes facts not  
3 in evidence.

4 A. Sorry, could you restate the question, please.

5 Q. Sir, yes, sir. This compendium that we've been  
6 talking about was supplied to all of the tobacco  
7 companies within the B.A.T. Group, wasn't it?

8 A. I have absolute --

9 MS. McGARRY: Same objection.

10 A. I -- I have absolutely no way of knowing that.  
11 The -- all of the tobacco companies in the B.A.T.  
12 Industries Group at -- in 1984 would have probably  
13 numbered well over a hundred, maybe even more than  
14 that, maybe 200, and I simply don't know whether all  
15 of those tobacco companies received a copy of the  
16 compendium.

17 Q. Well it was --

18 A. I just don't know.

19 Q. -- supplied to Brown & Williamson, wasn't it,  
20 sir?

21 MS. McGARRY: Had you finished?

22 THE WITNESS: Yes.

23 A. Sorry, your question?

24 Q. The Compendium of Epidemiological Studies was  
25 supplied to Brown & Williamson for its use, wasn't

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1 it, sir?

2 MS. McGARRY: Same objection.

3 A. I -- I -- I just don't know. I -- I -- I really  
4 don't know.

5 Q. All right. I would appreciate it if you would  
6 find out and report back to us tomorrow and, if you  
7 do not, that I be supplied with a witness who has  
8 sufficient knowledge on this subject.

9 MS. McGARRY: I'll take it under  
10 advisement.

11 MS. WIVELL: All right. I understand that  
12 you have requested that we quit at 5 o'clock, and why  
13 don't we do that since I understand it's past 5.

14 MS. McGARRY: Great. Thank you.

15 THE REPORTER: Off the record, please.

16 (Deposition recessed at 5:03 o'clock  
17 p.m.)

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## 1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that  
3 I am qualified as a verbatim shorthand reporter; that  
4 I took in stenographic shorthand the testimony of  
5 DAVID WILSON at the time and place aforesaid; and  
6 that the foregoing transcript consisting of pages 1  
7 through 252 is a true and correct, full and complete  
8 transcription of said shorthand notes, to the best of  
9 my ability.

10 Dated at Las Vegas, Nevada, this 16th day  
11 of August 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

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## 1 C E R T I F I C A T E

2 I, DAVID WILSON, the deponent, hereby  
3 certify that I have read the foregoing transcript  
4 consisting of pages 1 through 252, and that said  
5 transcript is a true and correct, full and complete  
6 transcription of my deposition, except per the  
7 attached corrections, if any.

8

9 (Please check one.)

10

11 \_\_\_\_ Yes, changes were made per the attached  
12 (no.) \_\_\_\_ pages.

13

14 \_\_\_\_ No changes were made.

15

16

17 DAVID WILSON

18 Deponent

19

20 Sworn and subscribed to before me this day  
21 of 199\_\_.

22

23

24 Notary Public

25 My commission expires: (WCL)

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